

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 10, 2010

REPORT NO: 10-082

ATTENTION: Rules Committee

SUBJECT: San Diego New Central Library

REQUESTED ACTION:

Authorize the Mayor or his designee to:

1. Authorizing the Mayor or his representative to apply to the Redevelopment Agency of the City of San Diego (Agency) and to take all necessary actions to secure funding for an amount of \$62,930,000 in Agency contributions to the City of San Diego for the purpose of funding the New Central Library (Project) construction and project related costs; and
2. Authorizing the Chief Financial Officer, to accept up to \$62,930,000, from Agency if the contribution funding is secured, and to deposit it into special interest-bearing Fund 200629 CC Contribution to City of San Diego-TE 2004A Bond in the amount of \$20,930,000 and Fund 200633 CC Contribution to City of San Diego that will receive tax increment in the amount of \$42,000,000; and
3. Authorizing the Mayor or his representative to enter into a Cooperation Agreement between City of San Diego and Agency for the New Central Library; and
4. Authorizing that the City-owned real property located at 10280 North Torrey Pines Road (APN 342-010-34) and 10820 North Torrey Pines Road (APN 340-011-10) may be pledged as collateral to secure the City's performance of that certain City of San Diego New Central Library Lease Agreement dated April 28, 2010, and filed in the Office of the City Clerk as Document No. RR-305763 on April 19, 2010 [Library Lease]; and
5. Authorizing that the Mayor or his designee to execute and deliver a deed of trust and such incidental documents and agreements as may be necessary to satisfy the City's obligation to secure its performance of the Library Lease, on terms and conditions deemed by the Mayor or his designee to be in the best interests of the City; and

6. Authorizing the Mayor or his representative to accept and deposit \$63,282,092 donations into Private and Other Contributions Fund No. 400264 for the construction of New Central Library and project related costs contingent upon certification by the Comptroller that the fund are secured and/or legally guarantee; and
7. Authorizing the Mayor or his representative to accept and deposit \$20,000,000 State Library Grant Funds into State Grant Fund No. 600001 for the construction of New Central Library and project related costs; and
8. Authorizing the Chief Financial Officer to appropriate and expend up to \$166,212,092 from CIP S-00799, SAN DIEGO NEW CENTRAL LIBRARY, for the purpose of executing the amendment agreements, construction contract and project related costs, contingent upon receipt of a fully executed CCDC contributions agreement the City Comptroller certifying funds are, or will be on deposit with the city treasurer for each phase of construction ; and
9. Authorizing the Mayor or his designee to execute a phased Construction Manager at Risk (CM@Risk) Construction Services Agreement with Turner Construction Company for construction of CIP S-00799, San Diego New Central Library, in the amount of \$153,000,000 contingent upon the City Comptroller certifying funds are available and furnishing one or more certificates certifying that funds necessary for expenditure under established contract funding phases, or will be on deposit with the city treasurer for each phase of construction; and
10. Authorizing the Mayor or his designee to purchase an Owners Protective Policy Indemnity (OPPI) Insurance policy under the City's California State Association of Counties- Excess Insurance Authority [CSAC-EIA] for construction of CIP S-00799, San Diego New Central Library, for a cost of \$182,825 contingent upon the City Comptroller certifying funds are, or will be on deposit with the city treasurer; and
11. Introducing and adopting an ordinance authorizing the Mayor or his designee to execute an Eighth Amendment to Agreement with a Joint Venture between Rob Wellington Quigley Architects, Inc., and Tucker Sadler Noble Castro Architects, Inc. for the Construction Administration of CIP S-00799, San Diego New Main Library to increase the contract by \$5,521,003, contingent upon the City Comptroller certifying funds are, or will be on deposit with the city treasurer; and

STAFF RECOMMENDATION:

Approve the Proposed Resolutions and Introduce and Adopt the Ordinance.

BACKGROUND:

The New Central Library project (also known as the New Main Library) will be located between Park Boulevard, 11th Avenue, and J and K Streets. The nine-story, 491,234 square foot building will house a number of public amenities including public communal areas, bay view terraces, roof gardens, public computers, broadband wireless internet, children's library, teen center, 350-seat auditorium, 400-seat multi-purpose room, art gallery, café, underground parking and photovoltaic energy system. The project construction documents are completed and approved by the Office of the State Library and the Division of the State Architect for American Disability Act (ADA) compliance, and are approved and permitted by the City of San Diego Development Services Department.

Total development costs for the library are in the amount of \$184,900,000. Public financing for the project consists of \$80,000,000 in Redevelopment tax increment and bond funds, \$20,000,000 in State grant funding awarded in 2003 under the Library Bond Act, \$1,617,908 of other funding that has been previously spent and \$20,000,000 in SDUSD funds to operate a charter school.

State Funding:

The original deadline of the \$20 million State Library Bond Act of 2000 grant was December 31, 2008. On February 11, 2009, the State Librarian approved a grant extension to July 1, 2009 in order to provide the City with adequate time to negotiate an agreement with SDUSD for the joint-use project. The grant extension was further extended in July, 2009 contingent upon several milestones, all of which have been met, with the exception that construction must commence by August 1, 2010.

San Diego Unified School District Funding:

On April 19, 2010 the City Council approved a Lease Agreement with SDUSD for the lease of the 6th and 7th floors to operate a charter school. The lease will provide \$20,000,000 in pre-paid rent towards the funding of the project. At the April hearing, the lease included a provision that \$30,000,000 in City-owned real property be pledged as collateral under a deed of trust. Two properties have been identified - 10280 and 10820 North Torrey Pines Road.

Redevelopment Funds:

In April 2005 the Redevelopment Agency and City Council approved up to \$80,000,000 in tax increment funding for the project from the Project Area. Of that, \$17,070,000 was previously authorized by the Agency for project design, police facility demolition, and site remediation. This action authorizes the remaining \$62,930,000 for expenditure and is accompanied by a companion Redevelopment Agency item.

SUMMARY:

On November 4, 2009, Council approved funding and amendments to agreements with Turner Construction, the joint venture design and architecture team, and project consultants for the construction bidding phase. The project is returning to Council for approval and funding of construction including authorization of the Construction Manager at Risk (CMAR) Construction Services Contract, the 8th amendment to the joint venture architectural consultant agreement, construction administration and commissioning of the facility, and an Owners Protective Professional Indemnity (OPPI) policy.

Construction Manager at Risk Contract (CMAR):

The new Central Library uses the CMAR project delivery system. Turner Construction was selected to provide pre-construction services in 2003 and has been involved in the project since early in the design phase. They have worked closely with the City and the Joint Venture architects Rob W. Quigley and Tucker Sadler Architects to ensure the project could be built on time and cost effectively. Turner Construction provided constructability review, cost analysis, value engineering, scheduling and phasing definition throughout the project's design development.

In November 2009 Council authorized Turner Construction to proceed with development of the construction Guaranteed Maximum Price (GMP). On April 29, 2010, after bidding the project in four separate bids with over 90 separate subcontractor/trade packages, Turner delivered a draft guaranteed maximum price to construct the building in the amount of \$144,436,810. The subcontractors and vendors selection was based on "best value" rather than price alone. Price and other factors that guided subcontractor selection included; location with a local and emerging preference, experience, claims history, financial stability, safety record and mentoring programs.

In the last month, representatives of the City, Turner, and the joint venture met to finalize the construction contract as exhibited in the attached, to arrive at a final GMP for construction of **\$141,670,144**. These negotiations resulted in a reduction to the cost of constructing the building of \$2,766,666. This reduction was achieved by implementing various suggestions submitted by the sub-contractors, reducing Turner Construction's General Conditions costs and refining the terms for the insurance policies. The construction budget adjustment enables the total project cost of \$184,900,000 to be achieved with additional expenditures/sunk costs for demolition and soil remediation and added scope changes discussed below. In addition to construction costs of \$141,670,144, the final GMP includes an additional \$3,699,426 in City contingency costs and \$7,630,430 in additional work for a total GMP of **\$153,000,000**.

The following additive alternates were not contemplated in the 2005 budget and are included in the additional work:

- Photovoltaic System to achieve 10% of the buildings power needs;
- Automated Materials Handling Book Transport System for more efficient operations;

Additionally, the City requested that Turner Construction include two line items that were previously accounted for in the 2005 budget as "City costs"- \$1,124,000 for Special Inspection,

and \$5,606,430 for library equipment, furnishings and shelving; and \$5,422,855 for City Contingency.

Amendment to Joint Venture Agreement:

In August 1996, after a rigorous selection process was conducted, the Mayor and City Council approved the selection of a team of architects and engineers led by Rob Wellington Quigley to design the proposed New Main Library on the original Kettner site. Subsequently, the Park to Bay site was selected as the future location of the proposed New Main Library. An architectural team, including Tucker, Sadler & Associates and a number of local engineers, was assembled to design the new site. Over the years, the original joint venture architectural agreement was incrementally amended to include additional scopes of work for the various project phases. This ordinance authorizing the Mayor or his designee to execute an Eighth Amendment to Agreement with a Joint Venture between Rob Wellington Quigley Architects, Inc., and Tucker Sadler Noble Castro Architects, Inc. will provide for the construction administration, interior design, mechanical equipment commissioning required for LEED certification, the final as-built documentation, errors and omissions insurance, and project closeout functions necessary to complete the project. This additional \$5,521,003 contract is consistent with the proposal first submitted in 2000 with wage inflation over the last ten years.

Private Fund Donations:

The City will rely on private donations to fund the portion of the project for which no state funds, school district lease revenue or redevelopment funding have been secured. This unfunded portion constitutes \$63,282,092 of the \$184.9M total project cost.

Since 2002 the San Diego Public Library Foundation (SDPLF) has been conducting the “quiet phase” of a capital campaign to raise the remaining funds. The Library Foundation is a registered non-profit 501(c)3 organization with the mission to create, steward and support an excellent free public library system by generating private sector support to supplement funding by the government.

To date, the Foundation has raised \$30,770,000 of the total \$63,282,092 in private capital funding needed and will continue this effort until the total project funding goal has been reached. An additional \$10,000,000 above the \$30.77M has been raised and committed to cover the incremental operating expenses over the first five years.

The \$30.7M received in pledges by the Foundation has been secured through binding agreements and will be drawn down at various times throughout the first phase of construction. An additional \$32.5 M remains to be raised by the Foundation for this project. It is important to note that approximately half of the private funding has been pledged prior to project approval. In an effort to raise the remaining funds, SDPLF has created a fundraising plan which leverages additional opportunities, such as naming rights to maximize private support. Utilizing fund development best practices and standards, SDPLF anticipates increased philanthropic enthusiasm for the project once it is a reality.

Operating Costs and Potential for Revenue:

Minimizing costs related to staffing and maintenance of the new facility has been a primary concern throughout the design process and is one of the major considerations in selecting building materials, finishes, mechanical systems, furnishings and mechanical equipment. These design considerations include significant energy savings elements that were implemented through the Leadership in Energy and Environmental Design Program to achieve a designation of LEED Silver, or higher.

The current operating plan assumes that the hours for the new Central Library will be maintained at 44 hours per week. The new Central Library's operational cost will increase from the current \$11.1 million per year to \$13.9 million per year, as a result of operating a larger facility. Revenues from parking, use of special public spaces, and major donations (\$2 million per year for the first 5 years of operation) will provide \$2.8 million per year and bridge the gap in operating costs through FY 2018. The San Diego Library Foundation will continue to seek gifts to augment operating funds past 2018.

In order to further generate efficiencies, a number of strategies will be employed to mitigate increased operational needs resulting from increased patronage. First, Central Library staff will be reconfigured into efficiency -based teams, to enhance functionality within the environment of the new Central Library. Staff will further consolidate upon integration into the new facility, making more staff available for public service hours. New technologies, such as the Automated Materials Handling Book Transport System and the RFID Self Checkout system, will allow the Library to increase self-directed services and centralize service points.

The Library plans to increase the use of volunteers to perform services that are not currently provided by staff. Volunteers will help conduct tours, serve at the 'welcome desk' and assist patrons with way finding in the new building.

Parking:

The project will provide 250 off street parking spaces in two levels of underground parking. Of the total parking spaces on site, 220 will be dedicated to the library use and per the lease agreement with SDUSD, up to 30 will be dedicated to the school use, of which 6 will be reserved for the school's sole use. It is proposed that the cost of parking is the prevailing rate charged by the City in its other parking structures and that the City will be responsible for all operating expenses of the parking structure. In addition, the City has a letter of agreement with JMI to provide additional offsite parking.

Parking impacts were analyzed in the previously certified Mitigated Negative Declaration, referring back to the April 1992 Ballpark Master Environmental Impact Report. Parking impacts associated with the Library were not deemed to significantly increase the severity of the anticipated parking shortfall in the vicinity of the ballpark. Although the parking shortfall associated with the proposed library could not be accommodated during ballpark events on weekday afternoons and weekend evenings, the additional shortfall would not create an impact that would be substantially higher than already would occur in the area.

Energy Efficiency and Sustainability:

The Project will, at minimum, achieve a LEED Silver certification (or higher) through its energy-efficient design and use of the latest technologies. Computerized SMART energy meters turn off lights when sufficient natural light is available and well-focused interior and exterior lighting reduces nighttime light pollution. Additional energy efficiency features include; low-energy consumption rated computers, long-life florescent bulbs, occupancy sensors, day lighting sensors and shading devices, reflective roofing materials, low-flow plumbing fixtures, drip irrigation, other high-efficiency irrigation systems and use of drought tolerant plants to achieve water use reductions. Low-Volatile Organic Compound (VOC) emitting materials and finishes and products made from recycled materials translates into less energy usage in the extraction and processing of raw materials needed for this building.

The project supports local suppliers and reduces the environmental impact of materials transport with 20 percent of materials manufactured within the region and 50 percent locally harvested. At least 50 percent of wood building components will meet Forest Stewardship Council standards for socially and environmentally responsible products. Carbon monoxide monitoring will be provided in the subterranean parking garage. Carbon dioxide monitoring will provide feedback on space ventilation performance to allow for operational adjustments. Indoor chemical and pollution monitoring will be provided in all the print areas. The mechanical system provides for increased ventilation through increased air changes.

Solar Alternative:

Per Council direction at the October 14, 2009 City Council's Rules, Open Government, and Intergovernmental Relations Committee and the November 4, 2009 City Council hearing a solar alternative was added to the construction bid package. An additive alternate for photovoltaic cells was bid through a Design/Build Request for Proposal (RFP) process. Four design/build teams originally responded with proposals to include solar panels on the library roof and other elements of the facility.

Ultimately, the respondents narrowed to one team that offers two procurement options: either a capital project priced at \$394,216 or a 15-20 year purchase power agreement (PPA) option. Either option will necessitate \$21,745 in additional architectural and consultant services, which would be performed as an additional service under the Joint Venture Agreement. The PPA would also require \$35,000 for Turner's management fees.

Materials for the solar alternative will not be purchased for at least 18 months and will be paid for out of the City's contingency. During this time, it is expected that costs for the system will fluctuate and the system components may change. If at the time of purchase, the City contingency is insufficient to procure the capital outlay, then the lease purchase option will be explored and a lease agreement will be brought back to City Council at that time. Deferring procurement options until time of purchase allows the City to take advantage of new innovations that are constantly emerging in this field.

FISCAL CONSIDERATIONS:

These actions request the appropriation and expenditure of up to \$166,712,092 from CIP S-00799, SAN DIEGO CENTRAL LIBRARY for the purpose of project construction and related costs, contingent upon the City Comptroller certifying funds are, or will be on deposit with the city treasurer for each phase of construction. Funds will be available in: CC Contribution to City of San Diego-TE 2004A Bond Fund No. 200629 (\$20,930,000); CC Contribution to City of San Diego Fund No. 200633, (\$42,000,000); SDUSD Fund Number 400003 (\$20,000,000); State Grant Fund No. 600001 (\$20,000,000), and Private Donation Fund No. 400264 (\$63,282,092).

The GMP is broken into two phases: Phase I (\$123,679,154) will provide a completed building core and shell sufficient for SDUSD to begin their tenant improvement work, and Phase II (\$18,040,990) will provide the completed library interior finish work and auditorium. The two-phase construction contract requires \$133,700,000 to be secured and guaranteed in order to complete all of Phase I and ensure that SDUSD can complete tenant improvements and operate a charter school. Currently, all Phase I funding has been secured. The additional \$32,512,092 in private donations must be secured by January, 2012 in order to initiate contracts for Phase II. The City's liability under the state grant award contemplates full operation of a library. If the City were to default on this obligation, the state grant would require re-payment.

EQUAL OPPORTUNITY CONTRACTING:

Staff is the process of conducting a comprehensive review and verification of Turner Construction's subcontractor participation information. The results will be provided once the review is complete. Turner has an approved EO Plan on file dated October 2009. EO plans approvals are granted for two years.

ENVIRONMENTAL IMPACT ANALYSIS:

On May 28, 2002, the San Diego City Council approved the New Main Library Project, certified the original Mitigated Negative Declaration (MND) (LDR No. 41-0980), and adopted the Mitigation Monitoring and Reporting Program (MMRP) (Council Resolution R-296576) and the application for round one of the Library Bond Act Grant application process. In order to satisfy the grant application requirements for round two of the Library Bond Act, the original MND was submitted to the State Clearing House (SCH) in January 2003 for the required 30-day public review. Prior to the close of the SCH review period, the City Council approved a resolution to submit an application for the Main Library in round two of the Library Bond Act process. A subsequent Notice of Determination was filed for this action based on the previously approved MND (Resolution No. R-297614, dated February 3, 2003). Because one letter of comment was received from a State agency during the required SCH review period, an Addendum (LDR No. 41-0980A) was prepared to respond to the comment letter and clarify the environmental process that was followed for round two of the Library Bond Act grant application. Subsequent to certification and adoption of the Main Library MND in 2002 and the addendum in 2004, the Downtown Community Plan was adopted in 2006 along with certification of a Final Program EIR (FEIR), which assumed intense development on this site and the project consistent with the Main Library project.

On October 9, 2009, the Development Services Department (DSD), Environmental Analysis Section provided a memorandum to the Engineering and Capital Projects Department analyzing whether any further environmental review under the California Environmental Quality Act (CEQA) would be required should the Project incorporate a school use on two floors where office uses had been contemplated under the original MND for the project. This evaluation concluded that the inclusion of a school did not trigger any of the conditions specified in CEQA Guidelines Section 15162 that require the preparation of a subsequent MND for the project. Specifically, DSD determined that, including a public school on in the New Central Library project, would not result in a substantially changed project; would not result in new impacts or changed circumstances that would require a new environmental document; and all potential impacts were adequately addressed in the 2006 FEIR.

Subsequently, the project site was cleared of the previous Police Garage uses and soil remediation work has been completed. The site is currently vacant and a building permit has been issued by the Development Services Department. In order to complete construction of the New Central Main Library, the remaining mitigation measures related to geology, human health/public safety/hazardous materials, and historical resources (archaeology) will be implemented in accordance with the previously certified MND and Addendum with DSD Environmental Staff oversight.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The following actions have occurred since 1996:

- On August 5, 1996, City Council approved Tucker Sadler Architects, Inc. (TSA) and Rob Quigley as Main Library Architects R-287743: and authorized executing an agreement with joint venture between Rob Wellington Quigley, Inc. and Tucker Sadler Nobel Castro Architects, Inc. to provide Architectural services for the project.
- On June 5, 2000, (R-293252) City Council selected the site at 12th Street and J Street (Park-to-Bay site) and directed the City Manager to proceed with the project.
- On October 2, 2000 an agreement was enacted with Rob Wellington Quigley Architects for the schematic design of the New Main Library at the Park-to-Bay site (R-29390).
- On May 28, 2002, the City Council certified MND (LDR-No. 41-0980) for the development of the Main Library. A subsequent Notice of Determination was filed for an action by City Council to submit an application for round two of the Library Bond Act (Resolution No. R-297614, dated February 3, 2003).
- On May 28, 2002 Council approved an agreement with Steinmann Facility Development Corp. per R-296576 for project management assistance services.
- On August 10, 2004 Council authorized executing an agreement with Turner Construction Company for pre-construction service.
- On April 19, 2005, City Council and the Redevelopment Agency authorized the expenditure of \$3,737,202 for a total of \$16,500,000 of Agency tax increment funds, for demolition of the existing Police Garage, clean up and removal of contamination found on the site, and project and construction management costs associated with the project including the First Amendment to Agreement with Turner Construction Company for pre-construction services,

- On July 7, 2009, (R-05063), the City Council authorized a letter of intent that defines the conditions of San Diego Unified School District leasing the sixth and seventh floors of the New Main Library as a Charter School and on April 19, 2010 (R-305763), the City Council approved the City of San Diego New Central Library Lease Agreement with SDUSD.
- On November 4, 2009, (R-305369) City Council and Agency authorized up to \$570,000 Agency funding for amendments to agreements with Turner Construction, WRISC, Inc., Steinmann Facilities Development Consultants, and the Joint Venture for the bidding phase of the project.
- On March 2, 2010, City Council adopted the Construction Manager at Risk Implementing Ordinance, (O-19934) which provides for Construction Manager at Risk to be used as a City of San Diego construction project delivery system.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

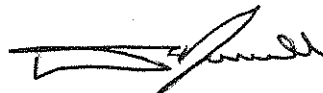
Citizen committees have studied possible sites for the new main library through 45 independent studies done over a 35-year period of time. Extensive community input was obtained with all major stakeholders in agreement. In 2001, the Park-to-Bay site was unanimously selected by the Mayor and City Council for the new Main Library. The Friends of the Library and Board of Library Commissioners endorsed this site. Before commencing design, the city sponsored a series of participatory workshops that were attended by over 700 people. Ideas generated from extensive public dialogue included the reading room, the dome shape, the "public penthouse" activities and the desire for a rational yet memorable building. The resulting community input guided the library design which was formally approved by Centre City Advisory Committee (CCAC) and the Centre City Development Corporation (CCDC) Board.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Rob Wellington Quigley Architects, Inc., Tucker Sadler Noble Castro Architects, Inc. and their sub-consultants, Turner Construction Company, City of San Diego Library Department and its patrons, San Diego Unified School District, Centre City Development Corporation (CCDC), California State Library and the San Diego Library Foundation.



Patti Boekamp, Director
Engineering & Capital Projects

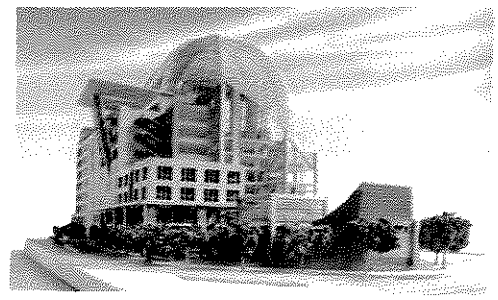


Dave Jarrell
Deputy Chief of Public Works

Attachments:

CM@R Construction Services Contract
8th Amendment to agreement for Professional Services for San Diego Central Library
Cooperation Agreement between the Redevelopment Agency and the City of San Diego
Schedule for Encumbrance of Funds
Central Library Budget Comparison

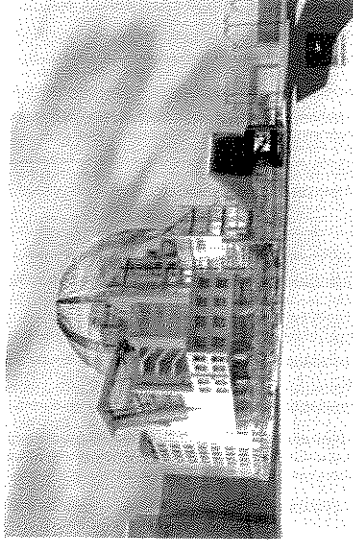
San Diego New Central Library Budget



Item	2005 Cost Estimate	June 2010 GMP and Project Cost	June 2010 Phase I Budget	June 2010 Phase II Budget
Turner Construction GMP	\$145,000,000	\$141,670,144	\$123,629,154	\$18,040,990
*FF&E	0	\$5,606,430		\$5,606,430
*Special Inspection	0	\$1,124,000	\$1,124,000	
*Book Conveyor System	0	\$900,000		\$900,000
*City Contingency	0	\$3,699,426	\$3,177,967	\$521,459
Turner Construction's GMP- Total	\$145,000,000	\$153,000,000	\$127,931,121	\$25,068,879
Additional Insurance	\$1,000,000	\$182,825	\$182,825	
Public Art	\$700,000	\$700,000		\$700,000
Turner Preconstruction Services	\$993,500	\$1,192,552		
Design and Other Consultants	\$15,500,000	\$18,767,608	\$4,021,003	\$1,500,000
Permits	\$623,000	\$833,959	\$171,000	
Special Inspection	\$1,200,000	0		
FF&E	\$8,000,000	0		
Computers and Phones	\$5,000,000	\$4,076,553		\$4,076,553
Sunk Costs	\$1,200,000	\$3,585,792		
City Contingency	\$3,356,500	0		
Construction Management	\$2,000,000	\$2,060,711	\$1,394,051	\$666,660
Library Relocation Costs	0	\$500,000		\$500,000
Total Budget	\$184,900,000	\$184,900,000	\$133,700,000	\$32,512,092

- The June 2010 budget equals the addition of sunk costs at \$18,687,908, plus Phase I and Phase II
- Turner Preconstruction services increased by \$199,052 for outreach and additional review and bidding services
- Design and Other Consultant services have increased by \$3,267,608 due to additional insurance, plan review, increased scope and wage inflation.
- Permit Costs increased by \$210,959
- Special Inspection's estimated costs have decreased by \$76,000 and are now carried in Turner's GMP
- FF&E estimate has been decreased by \$2,393,570 to reflect the latest inventory list and are now carried in Turner's GMP
- Computers and Phones budget estimate has been decreased by \$923,447 to reflect the latest inventory list
- Sunk costs have been increased to account for the completed demolition and remediation of contaminated soil contracts.
- Library Relocation costs were not identified in 2005 as a capital expense.

San Diego New Central Library
Schedule for
Encumbrance of Funds



Funding Source	CCDC	Private	Other	SDUSD	State Grant	TOTAL
Current Funding	\$17,070,000	0	\$1,617,908			\$18,687,908
Funds needed June 2010	\$62,930,000	\$30,770,000		\$20,000,000	\$20,000,000	\$133,700,000
Funds needed January 2012		\$32,512,092				\$32,512,092
Total	\$80,000,000	\$63,282,092	\$1,617,908	\$20,000,000	\$20,000,000	\$184,900,000

➤ Based on a 30 month two phase construction contract beginning in July 2010 and Phase II starting in January 2012.



DRAFT

San Diego New Central Library
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES

GMP

PROJECT NO. _____

CONTRACT NO. _____

STATE PREVAILING WAGES APPLY



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**CITY OF SAN DIEGO, CALIFORNIA
ENGINEERING & CAPITAL PROJECT DEPARTMENT**

**San Diego New Central Library
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES**

THIS AGREEMENT is made and entered by and between the City of San Diego, a California municipal corporation, hereinafter designated the "City" and Turner Construction Company, hereinafter designated the "Construction Manager at Risk" or "CM@Risk" for the construction of the City of San Diego's New Central Library.

RECITALS

- A. The Mayor and City Council on _____, in Resolution No. R- _____ authorized the award and execution of a construction services agreement with Turner Construction Company for construction of the San Diego New Central Library (Project).
- B. The City intends to construct the Project as more fully described in Exhibit A to this contract.
- C. To design and assist in the administration of said Project the City has entered into a contract with the Joint Venture, Rob Wellington Quigley architects and Tucker Sadler Noble Castro Architects, hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the City the ability to provide construction management services and to construct the Project, and based on this representation the City engages the CM@Risk to provide these services and construct the Project.
- E. On August 10, 2004 a Preconstruction Services Agreement was executed between City and CM@Risk to perform design phase services. This agreement is on file with the City Clerk as document No. RR-299560, and is incorporated herein by this reference.
- F. On April 19, 2005, the First Amendment to that Preconstruction Services Agreement was executed between the City and CM@Risk, to perform additional design phase services. This amendment is on file with the City Clerk as Document No. RR-300359-2, and is incorporated herein by this reference. Those services may continue during the duration of this contract.
- G. On January 28, 2010, the Second Amendment to the Preconstruction Services Agreement was executed between the City and CM@Risk to perform additional services including putting work out to bid and formulated their GMP for this Project. The Second Amendment to the Preconstruction Services Agreement is

on file with the City Clerk as Document No. OO-19910 and is incorporated herein by this reference.

- H. The CM@Risk has provided cost estimating, value engineering, and constructability review for this Project during the design and has thoroughly reviewed the Construction Documents and attests that the project is constructible, that, based upon its review and without assuming design responsibilities, there are no known gaps or inconsistencies in the documents that cannot be accommodated within the Contractor's Contingency, and that the Project can be constructed for the GMP that will not exceed \$153,000,000.
- I. The CM@Risk has observed those items readily observable from a surface site inspection, read the geotechnical reports and Mitigated Negative Declaration (MND) for the Project site.

NOW THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the City and the CM@Risk agree as follows:

AGREEMENT

Article 1 - Definitions

"Agreement" ("Contract") means this written document signed by the City and CM@Risk covering the construction phase of the Project, all exhibits to this document, and any other documents referenced in or attached to this document and specifically incorporated by reference.

"Change Order" means a type of contract amendment issued after execution of this Agreement or future GMP amendments signed by City and CM@Risk, agreeing to changes to the GMP, the Contract Time, and/or the terms and conditions of this Contract. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time or other modifications to Contract terms.

"City ("Owner" or "OWNER") means the City of San Diego, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services is to be provided pursuant to said Contract. Regulatory activities handled by the City of San Diego Developmental Services, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" means the person designated in section 3.2.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

"CM@Risk" means Turner Construction Company.

"CM@Risk's Contingency" means a fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk's Contingency is described in section 5.2.5.

"CM@Risk's Representative" means the person designated in section 2.1.1.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) Permits issued by jurisdictional regulatory agencies, including Mitigated Negative Declaration LDR No. 41-0980; (ii) Change orders and/or supplemental agreements, whichever occur last; (iii) this Agreement; (iv) CM@Risk's GMP including written qualifications, assumptions and conditions thereto; (v) the exhibits and attachments to this Agreement; (vi) approved shop drawings and submittals; (vii) Request for Proposals; (viii) Reference specifications (project manual including Specifications for the Construction of the San Diego New Central Library) (ix) Plans; (x) Standard Plans and specifications; (xi) Pre-construction Services Agreement.

"Contract Price" means the total compensation paid to the CM@Risk for Final Completion of the Project, determined in accordance with Article 5.

"Construction Fee" means the CM@Risk's administrative costs, home office overhead, profit and other costs set forth in section 5.2.6.

"Contract Time" means the Working Days as set forth in section 4.1, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

"Cost of the Work" means the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee or General Conditions Costs.

"Critical Path" means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

"Day(s)" mean calendar days unless otherwise specifically noted in the Contract Documents.

"Design Professional" means the Joint Venture between Rob Wellington Quigley Architects, Inc. and Tucker Sadler Noble Castro Architects, or another qualified firm that

may be selected by the City in accordance with section 3.3 of this Contract.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents and (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Field Order" means a written description of a change in the Work drawing from (or adding to) the Owner's Contingency, signed by the City and the CM@Risk. A Field Order may not change the Contract Time, the GMP, or the terms and conditions of this Contract.

"Final Acceptance" means the completion of the Work as described in section 4.3.

"Final Completion" means satisfactory completion of Work required by the Agreement as evidenced by the recorded Notice of Completion with the County of San Diego.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: (i) payroll costs for project manager or CM@Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CM@Risk or Subcontractors.

"Guaranteed Maximum Price" or "GMP" means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, allowances, taxes, and the Owner's and CM@Risk's Contingency as described in the GMP proposal attached as Exhibit B.

"GMP Plans and Specifications" means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

"Hazardous Materials or Waste" means items identified in Section 104 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time or, as defined in Section 25117 of the California Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, whichever is more restrictive.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work pertaining to construction means and methods as opposed to design.

"Notice of Completion" or "NOC" is defined as set forth in California Civil Code section 3093.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the CM@Risk to commence construction of the Project or parts of the Project. Separate NTP's will be issued for each phase under the Agreement. A new phase shall not be authorized until funding is secure for that entire phase and an NTP for that phase of work is issued to authorize the CM@Risk to begin work on that phase of the Project.

"Owner's Contingency" means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or differing site conditions. The amount of the Owner's contingency will be set solely by the Owner and will be included in the GMP. Use and management of the Owner's contingency is described in section 5.3.

"Performance Period" means the period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule as may be adjusted.

"Payment Request" means the City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

"Pre-construction Services Agreement" means the agreement between the City and CM@Risk for Services provided by the CM@Risk during the design phase, on file in the Office of the City Clerk as Document No. RR-299560, and all written amendments thereto.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

"Project" means the City of San Diego's New Central Library.

"Request for Information" (RFI) means a written request for information made by the CM@Risk to City and Design Professional to clarify any parts of the Construction Documents.

"Retention" means the amount withheld by the City from the money due to the CM@Risk that is held until Project Completion and is then paid to the CM@Risk as part of the final payment.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the CM@Risk or a Subcontractor of any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" means the land or premises on which the Project is located generally described as the city block bounded by "J" Street to the north, 11th Avenue to the west and Park Boulevard to the east, along with those portions of "J" Street, 11th Avenue, and "Park Boulevard" street improvements and building encroachments.

"Specifications" means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subconsultant" or "Subcontractor" means an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid subcontractors at any tier, who undertakes to perform a part of the Work for which the CM@Risk is responsible.

"Substantial Completion" means when the Work has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Project can be utilized for the purposes for which it is intended, and after any operational demonstrations or tests are complete and the temporary certificate of occupancy is issued.

"Supplier" means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk.

"Surety" means any individual, firm, or corporation, bound with and for the CM@Risk for the acceptable performance, execution, and completion of the Work, and for the satisfaction of all obligations incurred.

"Work" means the construction or the various separately identifiable parts thereof, required to be furnished during the construction phase to complete the Project. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

"Working Days" means Monday through Friday inclusive, except for City-recognized holidays.

Article 2 - CM@Risk's Services and Responsibilities

2.1 Scope of Work. The CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project. All Work will be performed in a good and workmanlike manner and within the care and skill of a qualified licensed contractor in California. The Work shall be performed pursuant to and in conformity with the Project's Technical Specifications (Exhibit C), Construction Drawings (Exhibit D), and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld. It is not required that the services be performed in the sequence in which they are described.

2.1.1 CM@Risk's Representative. The CM@Risk shall designate a local's Representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City, but no less than once a week, and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City.

2.2 Approved Information System. CM@Risk may utilize, with City approval, any industry standard web-based project management information system that has capabilities and access equivalent to the Prolog Construction Project Management system.

2.2.1 Training. The CM@Risk shall provide training for City staff assigned to the Project.

2.2.2 Software. The CM@Risk shall furnish this computerized office platform with fully licensed software. Software shall be compatible with City software standards and should include, but not be limited to, word processing, scheduling, budgeting, e-mailing, AutoCad® (latest version), Imaging software from Adobe®, and an internet browser.

2.2.3 Backup Files. Software shall include capability and function to store, backup and maintain the electronic documents generated. CM@Risk shall provide the City with electronic backup for all files at the conclusion of the Project.

2.2.4 E-mail. The CM@Risk will endeavor to maintain and utilize electronic mail for correspondence and maintain correspondence records in the electronic approved information system.

2.3 Subcontractors and Suppliers.

2.3.1 Participation Goals. The City encourages the participation of Small and/or Emerging Local Business Enterprises, Disadvantaged, Minority, Women

and/or Disabled Veteran owned business entities (SLBE, ELBE, DBE, MBE, WBE, and DVBE respectively) in the construction of the Project. The CM@Risk shall maintain the participation of such firms identified in the GMP proposal, and may not replace such firms without the written consent of the City, which shall not be unreasonably withheld.

2.3.2 Certification. City accepts Certification of DBE, MBE, WBE, DVBE, ELBE or SLBE by any of the following methods:

2.3.2.1 Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE.

2.3.2.2 Current MBE or WBE certification from the California Public Utilities Commission. Additional information may be obtained from <http://www.cpuc.ca.gov/PUC/supplierDiversity/CertInfo.htm>.

2.3.2.3 Current MBE certification from the San Diego Regional Minority Supplier Diversity Council. Additional information may be obtained from www.supplierdiversitysd.org.

2.3.2.4 DVBE certification is received from the State of California's Department of General Services Office of Small and Minority Business (916) 322-5060 or go to their link at <http://www.pd.dgs.ca.gov/smbus/default.htm>

2.3.2.5 Current certification by the City of Los Angeles as DBE, WBE, or MBE. For more information go to http://bca.lacity.org/index.cfm?nxt_body=tutorials_c.cfm.

2.3.2.6 Current certification by the City of San Diego as ELBE or SLBE. For more information go to <http://www.sandiego.gov/eoc/boc/slbe.shtml>.

2.3.3 Outreach Consultant. The CM@Risk shall hire a third party outreach consultant to increase participation by DBE, MBE, WBE, DVBE as well as small and local businesses.

2.3.4 Outreach Documentation. The CM@Risk shall document specific efforts to increase subcontractor participation by small and local contractors. CM@Risk shall explain why any small and/or local business submitting a bid was not selected for this Project if they are not used.

2.3.5 Contract Records and Reports. The CM@Risk shall maintain the following records and reports required by the City of San Diego's Equal Opportunity Contracting Program.

2.3.5.1 CM@Risk shall submit either a work force report (attachment AA) or an Equal Employment Opportunity (EEO) Plan to the City for approval.

2.3.5.2 CM@Risk shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of material and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

2.3.5.3 Monthly Employment Report. The Monthly Employment Report (*Attachment-BB*) shall list each individual employee working on the specific project by full name, social security number, gender, ethnic category, craft and employee source (i.e. union hall, apprenticeship program, other). Each Monthly Employment Report shall be submitted by the 5th day of the subsequent month to the City's Representative with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, California 92101. The Contractor is responsible for collecting and submitting a Monthly Employment Report from all Subcontractors, at any level, working at the site.

2.3.5.4 Monthly Invoicing Report. The Monthly Invoicing Report (*Attachment -CC*) shall report payments made to all Subcontractors and Suppliers. Each Monthly Invoicing Report shall be submitted by the 5th day of the subsequent month to the City's Representative with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, California 92101. Incomplete reports may cause payment delays and/or non-payment of Payment Requests.

2.3.5.5 Final Summary Report. The records maintained by CM@Risk under subsection 2.3.5.3 described above shall be consolidated into a Final Summary Report (*Attachment –DD*), certified as correct by an authorized representative of the Contractor, and submitted to the City's Representative with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, California 92101, 30 days prior to Final Completion. A Notice of Completion will not be filed by the City until after its review of the Final Summary Report.

2.3.6 Subcontractor and Supplier Selection. CM@Risk may select Subcontractors and Suppliers in one of three ways: lowest responsible bidder, best value for price and qualifications, or highest qualifications.

2.3.6.1 The CM@Risk shall obtain approval from the City for the selection method used, which shall not unreasonably be withheld, and review the Subcontractors and Suppliers ultimately chosen to verify that they have not been debarred and are in good standing as a licensed contractor in California.

2.3.6.2 The CM@Risk may pre-qualify Subcontractors and Suppliers, in a manner at least as stringent as the City's pre-qualification standards.

2.3.6.3 All Subcontractors and Suppliers shall be properly licensed in accordance with California law.

2.3.6.4 All subcontract bids shall be opened and provided to the City without reservation or redaction. All records relevant to the award and performance of Subcontractors and Suppliers shall be public and provided to the City upon request and without redaction.

2.3.6.5 Pursuant to Municipal Code section 22.3809(d), the City may administer bidding itself for Subcontractors and Suppliers, or to direct the bidding procedures to be used by the CM@Risk. The CM@Risk may use its corporate-generated subcontractor agreement (Form 36) to retain Subcontractors or Suppliers, provided the subcontractor agreement contains the terms required to be included in subcontracts by this Contract.

2.3.6.6 The CM@Risk shall not self perform any Work under the contract unless the City expressly allows such self performance in writing. The Work proposed to be self performed shall first be advertised and bid. The CM@Risk shall self perform the Work only if it is the lowest responsible bidder. For Work proposed to be self performed by the CM@Risk, the City will administer the bid process.

2.3.7 Subcontractor Listing. The CM@Risk shall follow the Subletting and Subcontracting Fair Practices Act (Act), California Public Contracts Code Sections 4100 through 4114. CM@Risk shall provide a written list of all proposed Subcontractors and Suppliers who will perform work costing equal to or greater than one-half of one percent of the total GMP that are selected during the bidding process. The list shall include Subcontractor and Supplier names, value of their subcontract and a description of the scope of work they will be performing. CM@Risk shall not substitute any other person or subcontractor to perform the scope of work listed for each listed Subcontractor or Supplier, except as provided by the Act. The City reserves all remedies under the Act for any unlawful Subcontractor substitution by the CM@Risk.

2.3.7.1 Subcontract Work greater than one-half of one percent of the total GMP which is identified after the GMP is submitted to the City shall be awarded pursuant to section 2.3.6.

2.3.8 Subcontract requirements. The CM@Risk shall require each Subcontractor and Supplier, to the extent of the Work to be performed by such Subcontractor and Supplier, to assume towards the CM@Risk all the obligations and responsibilities which the CM@Risk by the Contract Documents assumes towards the City and shall incorporate the terms of this Agreement and the

Contract Documents within any subcontract agreement to the extent applicable to the Work to be performed by the Subcontractors.

2.3.9 Disputes. In any dispute between the CM@Risk and a Subcontractor or Supplier, the City shall not be made a party to any judicial or administrative proceedings to resolve the dispute unless the CM@Risk first complies with claim and dispute resolution process in Article 8. To the extent set forth and in accordance with Article 11 of this Agreement, the CM@Risk agrees to defend and indemnify the City in any dispute between the CM@Risk and any Subcontractor or Supplier should the City be made a party to any judicial or administrative proceedings to resolve a dispute in violation of this provision.

2.4 Permits and Utilities.

2.4.1 City Permits and Utilities. The City will obtain, at no cost to the CM&Risk, development services building permits and pay for water and sewer connection fees as well as for permit fees for any City directed changes to the Work. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

2.4.2 Other Permits. CM@Risk shall obtain and pay for all other permits and fees required to construct the Project, including permits necessitated by its operations off-site unless otherwise stated in the Contract Documents. This includes permits for electrical, shoring, mechanical, plumbing, fire sprinkler, OSHA, State Elevator and any other additional permitting/deferred approval requirements other than requested changes by the City. Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity.

2.4.3 Temporary Utilities. CM@Risk shall provide and pay for all temporary utility services necessary for its own use during the performance of the Work, including the testing, commissioning and landscape maintenance period. This includes electrical, gas, water, telephone, data and internet services, until the City's acceptance of Substantial Completion of the Project. Arrangements for construction water and electricity are the CM@Risk's responsibility. CM@Risk shall not draw water from fire hydrants (except in an health or life safety emergency), without obtaining permission and a temporary construction water meter from the City's Public Utilities Department.

2.5 Pre-construction Conference. Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

2.5.1 Purpose. The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of record project documents required and emergency telephone numbers for all representatives involved in

the course of construction.

2.5.2 Notice to Proceed. After the pre-construction conference, a Notice to Proceed letter will be issued by the City confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. The Notice to Proceed date will be confirmed to all subcontractors by the CM@Risk. The CM@Risk shall provide City with a current detailed construction schedule on PRIMAVERA software within ten (10) working days after receiving notice to proceed with construction phase.

2.5.2.1 The City will issue the NTP for the first phase of construction no later than July 26, 2010. If the City does not issue the NTP by July 26, 2010, the CM@Risk may be entitled to an extension in Contract Time and additional compensation in accordance with section 6.2 of this Contract.

2.5.3 Subcontractor Participation. At the pre-construction conference, the CM@Risk shall provide a statement of proposed DBE/MBE/WBE/DVBE/SBE or LBE utilization identifying the certified entities that will be utilized on the project to meet the required goals. The CM@Risk shall also provide copies of all purchase orders and/or contracts with DBE, MBE, WBE, and DVBE or SBE and LBE subcontractors used to meet the subcontracting goals for the work on which bids have already been received and accepted by the City.

2.5.4 Schedule of Values. No later than ninety (90) Days after the Notice to Proceed is issued, the CM@Risk shall provide for City approval a schedule of values with cost loaded projections based on the categories used in the procurement of the Work but not greater than the approved GMP and identifying the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.5.5 Attendance. Minimum attendance by the CM@Risk at the pre-construction conference shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the CM@Risk, the job superintendent, the safety officer, preconstruction manager and cost estimator. The City's Representative shall also attend.

2.6 Control of the Work. Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate contractor, CM@Risk shall provide, through itself or Subcontractors, the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

2.6.1 Standard of Care. The CM@Risk shall use the degree of care and skill ordinarily exercised by reputable contractors practicing in the same field of service in the State of California. Where approval or acceptance by the City is required, it is understood to be general approval only and does not relieve the CM@Risk of responsibility for complying with all applicable laws and codes pertaining to means and methods as opposed to design.

2.6.2 Coordination of the Work. CM@Risk shall coordinate all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction. CM@Risk shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. CM@Risk shall monitor and report monthly to the City on actual performance compared to the Construction Schedule.

2.6.2.1 If City performs other Work on the Project or at the Site itself or with separate contractors under City's control, CM@Risk and the City both agree to reasonably cooperate and coordinate respective activities with the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6.2.2 CM@Risk may contract with the San Diego Unified School District to perform tenant improvements at the Site only if the contract is approved by the City and will not interfere with the schedule of Work under this contract.

2.6.3 Superintendent. The CM@Risk's Superintendent shall be present at the Site at all times that construction activities are taking place. All elements of the Work shall be under the direct supervision of the CM@Risk's Superintendent or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work. In the event of noncompliance with this subsection, the City may require the CM@Risk to stop or suspend the Work in whole or in part.

2.6.4 Manufacturer Approval. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor or Supplier employed for such work is approved by the manufacturer.

2.6.5 Surveying. The Contractor shall be responsible for all surveying services required for completion of the Work, including providing survey monuments showing the property lines that should be maintained throughout the Project.

2.6.6 Field Measurements. The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be promptly reported to the City.

2.6.7 Building Grades. The CM@Risk shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised

by a civil engineer or surveyor licensed in the State of California.

2.6.8 Removal of Persons from Site. Any person employed by the CM@Risk or any Subcontractor or Supplier whom the City reasonably concludes does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Site by CM@Risk, Subcontractor or Supplier employing such person, and shall not be employed again in any portion of Work without the written approval of the City.

2.6.9 Responsibility for Subcontractors. CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor of any tier, including but not limited to any third-party beneficiary rights.

2.7 Control of the Work Site. Once the Notice to Proceed is issued, the CM@Risk is responsible for the Project Site. Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction waste to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use. As used in this section, "construction waste" is not intended to mean or be interpreted as Hazardous Materials which are addressed in section 2.24 of this Contract.

2.7.1 Dust. CM@Risk shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the San Diego County Air Pollution Control District's Rules and Regulations.

2.7.2 ADA Access. CM@Risk shall follow ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) during construction activities once the Project is occupied. ADA accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

2.7.3 Deliveries. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@Risk.

2.8 Shop Drawings, Product Data and Samples. The purpose of the submittal of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate for those portions of the Work for which submittals are required, the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.8.1 Submittals. The CM@Risk shall review, and electronically submit to the City copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. By submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not required by the Contract Documents, may be returned without action. Submittals shall be included in the Project schedule.

2.8.1.1 The City shall forward copies of the submittals to the Design Professional for review and recommendation. The City shall forward comments and recommendations from the Design Professional to the CM@Risk within ten (10) Working Days after the submittals were originally received by the City from the CM@Risk.

2.8.1.2 If more than ten (10) Working Days are necessary to review any submittals due to their size or complexity, the City shall notify the CM@Risk within the ten (10) Working Days of receiving submittals so that the parties may meet and agree on a schedule for review and approval of the submittals that will not impact the Project schedule.

2.8.2 City Approval Required. The CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.

2.8.3 Responsibility for Submittals. The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the City in writing of such deviation at the time of Submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.

2.8.4 Re-Submittals. If the CM@Risk makes any revisions to re-submitted Shop Drawings, Product Data, Samples, or similar submittals, other than those

requested by the City on previous submittals, the CM@Risk shall identify such revisions to the City so that the City may review them as well.

2.8.5 Informational Submittals. Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.8.6 Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.9 Quality Control, Testing and Inspection.

2.9.1 New Materials. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.9.2 Inspection. All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, or appliances may be subject to the inspection and approval, or rejection by the City if found not to be in compliance with the Contract Documents. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.9.2.1 The CM@Risk shall employ and pay for the services of a qualified inspection agency to perform any and all special inspection services required by the Contract Documents. Special inspection and testing by the special inspectors shall meet the minimum requirements of the following building codes: 2001 California Building Code based on the 1997 UBC, as amended by the City Charter and the San Diego Municipal Code. Special inspector shall comply with all requirements of the Development Services Department and the building permit. The requirements of the Development Services Department can be found at the website: <http://www.sandiego.gov/development-services/>

2.9.3 Testing Agency. The CM@Risk will cooperate with the City and all others responsible for testing and inspecting the work and shall provide them access to the Work at all reasonable times.

2.9.3.1 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.9.3.2 Code compliance testing (including all Geotechnical requirements) and inspections required by codes or ordinances, or by a plan approval authority, shall be the responsibility of and shall be paid by the CM@Risk, unless otherwise provided in the Contract Documents.

2.9.3.3 CM@Risk's quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk as part of the Cost of the Work.

2.10 Trade Names and Substitutions. Unless specifically indicated that no substitutions are permitted, Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, shall be interpreted as allowing substitute or alternate items, subject to the following:

2.10.1 Requests for Substitution. The substitution shall be submitted by CM@Risk in writing to the City. In accordance with California Public Contract Code section 3400(a), unless specified elsewhere in the Contract Documents, the Contractor shall submit its list of proposed substitutions for "an equal" ("or equal") item within ninety (90) Days after award of the Contract. The City may accept substitutions after ninety (90) Days if substitution will be beneficial to City or the requested substitution is part of a cost reduction proposal. If an offered substitution by the CM@Risk for the trade names specified in the Contract necessitates changes to, or coordination with, other items of the Work, the information submitted shall include details showing such changes. Any savings from a substitution may be considered as a cost reduction item with shared savings available to the Proposer. The CM@Risk shall perform these changes as part of the substitution of material or equipment and at no additional cost to the City.

2.10.1.1 The CM@Risk shall submit the substitution to the City with supporting documentation showing the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.10.2 Submittal Requirements. The Submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution. The Submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the Submittal shall include any adjustment in the Contract Time created by the substitution. The CM@Risk, if requested by the City, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.10.3 Approval. The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected. The City can reject the substitution for any reason including appearance. If the City does not respond in thirty (30) Days, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.11 Project Record Documents. During the construction period, the CM@Risk shall maintain at the jobsite a set of blue-line or black-line prints of the Construction Document drawings and shop drawings for project record document purposes.

2.11.1 As-Builts. The CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The CM@Risk shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Depths of foundations below first floor.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

2.11.2 Drawings. Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location. Mark Project Record Drawings sets with red erasable colored pencil.

2.11.3 Source Identification. Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents. City's Representative shall verify record drawings are up to date on a monthly basis prior to approval of the monthly payment invoice.

2.11.4 Final Documents. The CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment. Upon receipt of the reviewed Project Record Drawing prints and Shop Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings limited by the scope set forth in sections 2.11.1, 2.11.2 and 2.11.3 and prepare the following for submission to the City within thirty (30) Days:

2.11.4.1 For any design/build elements where the CM@Risk has discretion on how to incorporate it into the Project, such as a fire sprinkler system, prior to Final Completion, the Contractor shall prepare and submit one complete set of full sized (24" x 36") original mylar final as-built drawings (CADD plots) prepared in accordance with the City's CADD

standards. Each CADD Mylar drawing sheet shall be wet stamped and signed by qualified responsible engineers registered in the State of California, and shall be stamped and wet signed by the architect/engineer of record, as required by law. Other applicable portions of the drawing title blocks shall also be signed by the CM@Risk and numbering system shall be coordinate with Design Professional on numbering system of mylars. Drawing mylar shall be 3 mils minimum thickness.

2.11.4.2 The original copy of the Project Record Drawings (redline mark-ups).

2.12. Project Safety. CM@Risk shall be solely responsible for initiating, maintaining and providing all safety precautions and programs related to the performance of the Work.

2.12.1 Purpose. CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.12.2. Safety Representative. CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

2.12.2.1 The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

2.12.3 Safety Requirements. CM@Risk and all Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement. CM@Risk shall also comply with any and all insurance carrier-mandated safety requirements and programs that do not violate any Legal Requirement.

2.12.3.1 CM@Risk shall comply fully with the requirements of section 1717 of the Construction Safety Orders, State Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same before the placement of concrete.

2.12.4 Accident Reports. CM@Risk will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all

government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.12.5 Safety Plan. The CM@Risk bears the ultimate responsibility for the health and safety of its employees. These specifications shall not be construed to limit the CM@Risk's liability nor to assume that the City, its employees will assume any of the CM@Risk's liability associated with Site Safety considerations. CM@Risk shall have a health and safety plan in place prior to commencement of Work. The plan shall meet all OSHA and other applicable requirements. This plan shall be submitted to the City at least one week before any construction activities begin. The City will not assume any role in determining the adequacy of the plan on behalf of the CM@Risk.

2.12.6 Indemnity. CM@Risk shall indemnify the City against any fines resulting from citations issued to the City by federal, state or local safety enforcement agencies due to the CM@Risk's failure to abide by applicable safety and health standards. CM@Risk's duty to indemnify shall be limited to fines and/or penalties resulting from citations.

2.13 Warranty. CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CM@Risk will correct or replace any Work not in conformance with this warranty at its own cost and expense, if notified by the City within one year after the date of Substantial Completion, or longer as may be required under the Contract Documents.

2.13.1 Exclusions. CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk, its employees or Subcontractors/Suppliers of any tier.

2.13.2 Response Time. CM@Risk shall take reasonable steps to commence correction of warranty Work, within seven (7) Days of receipt of written notice from City. This includes the correction, removal or replacement of any nonconforming Work and damage caused to other parts of the Work affected by nonconforming Work. If CM@Risk fails to commence such steps within such seven (7) Day period, the City may, in addition to any other remedies provided under the Contract Documents, commence correction of such warranty Work with its own forces upon written notice to CM@Risk. If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

2.13.3 Manufacturer's Warranty. Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.

2.13.4 Other Remedies. This section applies only to CM@Risk's obligation to correct warranty Work and is not intended to constitute a period of limitations or waiver of any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents or federal or state law.

2.14 Correction of Defective Work. CM@Risk agrees to correct, or commence correction, of any defective Work discovered prior to Substantial Completion that is not in conformance with the Contract Documents. During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, the City may, in addition to any other remedies provided under the Contract Documents, commence correction of such nonconforming Work with its own forces upon written notice to CM@Risk. If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

2.14.1 Effect of Payment or Use. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.14.2 Emergencies. The CM@Risk will respond and initiate corrective action within twenty-four hours of notice of nonconforming Work that poses an imminent threat to person or property.

2.15 State Prevailing Wages. As required by the California Labor Code, the CM@Risk shall ensure that all workers employed on the Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the City, which copies shall be made available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages may also be found at http://www.dir.ca.gov/dlsr/statistics_research.html. The CM@Risk shall post a copy of such determination at the Project Site.

2.15.1 Penalties. In accordance with section 1775 of the California Labor Code, the CM@Risk shall forfeit not more than \$50.00 for each calendar day or portion thereof to the City, for each worker paid less than the prevailing rates as determined by the Director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any Subcontractor under him or her.

2.15.2 Inspection of Wage Determinations. A copy of the above General Prevailing Wage Determination is on file and available for inspection at the Purchasing & Contracting Department, 1200 Third Avenue, Suite 200, San Diego, California 92101.

2.15.3 Unlisted Crafts. A craft or classification not shown in the Prevailing Rate Determination may be required to pay the rate of the craft or classification most closely related to it.

2.16 Apprentices on Public Works. The CM@Risk shall abide by the requirements of sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning the employment of apprentices by a contractor and any subcontractor performing a public works contract.

2.17 Working Hours. The CM@Risk shall comply with all applicable provisions of section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CM@Risk shall forfeit \$25.00 to the City for each worker employed in the execution of the Contract by the CM@Risk or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.

2.18 Nondiscrimination in Contracting. All City agreements, contracts, and subcontracts are subject to City of San Diego Ordinance No. 0-2000-143 adopted on April 10, 2000. All City contractors and subcontractors should be aware of the provisions of Municipal Code Sections 22.3501-22.3517. The policy applies equally to the CM@Risk and all Subcontractors and Suppliers.

2.18.1 Prohibited Conduct. CM@ Risk shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or Suppliers. CM@Risk shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. CM@Risk understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

2.18.1.1 The CM@Risk shall ensure that the language of section 2.18.1 is also incorporated in all subcontracts issued in support of the Project.

2.18.2 Disclosure Requirements. Upon the City's request, CM@Risk agrees to provide to the City, within sixty (60) Days, a truthful and complete list of the names of all Subcontractors, vendors, and Suppliers that CM@Risk has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by CM@Risk for each subcontract or supply contract. CM@Risk further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3501 - 22.3517). CM@Risk understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

2.18.3 Bid Requirements. As part of its bid or proposal, CM@Risk shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against CM@Risk in a legal or administrative proceeding alleging that CM@Risk discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

2.19 Access for Disabled Persons. The CM@Risk shall comply with all portions of Title 24 and the ADA. (For specific services and public accommodations, The CM@Risk may contact the Office of the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; phone number (202) 514-0301.) The CM@Risk acknowledges and agrees that the CM@Risk is aware of and will comply with Council Policy 100-04, incorporated herein by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. The CM@Risk and Subcontractors will be individually responsible for administering their own ADA and Title 24 program.

2.19.1 Certification. As a condition precedent to award of this Contract, the CM@Risk shall execute and submit to City the CM@Risk Certification for Title 24/ADA Compliance, as shown in Exhibit H.

2.20 Drug Free Workplace. City projects are subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. CM@Risk shall become familiar with the provisions of Council Policy 100-17 which was established by Resolution No. R-277952. The policy applies equally to the CM@Risk's Subcontractors and Suppliers. The elements of the policy are:

2.20.1 Definition. Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.

2.20.2 City Contractor Requirements. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all following:

2.20.2.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

2.20.2.2 Establishing a drug-free awareness program to inform employees about all of the following:

- The dangers of drug abuse in the workplace.

- The person's or organization's policy of maintaining a drug-free workplace.
- Any available drug counseling, rehabilitation, and employee assistance programs.
- The penalties that may be imposed upon employees for drug abuse violations.

2.20.2.3 Posting the statement required by subdivision 2.20.2.1 in a prominent place at contractor's main office. For projects large enough to necessitate a construction trailer at the job site, the required signage must also be posted at the Site.

2.20.3 Subcontractor Requirements. CM@Risk shall include in each subcontract agreement language which indicates the Subcontractor's and Supplier's agreement to abide by the provisions of this section. Subcontractors and Suppliers shall be individually responsible for their own drug-free workplace programs.

2.20.4 Certification. CM@Risk will submit the signed form included as Exhibit I certifying compliance with San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

2.20.4.1 The requirements of a drug-free awareness program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, contractors should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

2.21 San Diego Business Tax Certificate. All contractors, including Subcontractors, not already having a City of San Diego Business Tax Certificate for the Work contemplated shall secure the appropriate certificate from the City Treasurer, City Operations Building, Community Concourse, before the Contract can be executed.

2.22 Contractor Standards – Pledge of Compliance. City contracts, including public works construction projects, are subject to City of San Diego Municipal Code section 22.3224 as amended 11/24/08 by ordinance O-19808.

2.22.1 Certification. The CM@Risk shall complete a Pledge of Compliance as shown in Exhibit N attesting under penalty of perjury that it complies with the requirements of this section. The CM@Risk shall also ensure that its Subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section. Subcontractors may access the Pledge of Compliance at:
http://www.sandiego.gov/purchasing/pdf/contractor_standards_questionnaire.pdf

2.22.2 Subcontracts. CM@Risk shall include in each subcontract agreement, language which requires Subcontractors to abide by the provisions of City of San Diego Municipal Code § 22.3224. A sample provision is as follows:

2.22.2.1 "Compliance with San Diego Municipal Code § 22.3224: Subcontractor acknowledges that it is familiar with the requirements of San Diego Municipal Code § 22.3224 ("Contractor Standards"), and agrees to comply with requirements of that section. The Subcontractor further agrees to complete the Pledge of Compliance, incorporated herein by reference."

2.23 Stormwater Pollution Prevention Program. CM@Risk shall comply with the City's Stormwater Pollution Prevention Program requirements set forth in Exhibit E and hereby incorporated by reference. CM@Risk shall defend and indemnify the City against any fines or penalties assessed for violations of the Municipal Separate Storm Sewer System (MS4) Permit No. CAS0108758 (and its successor permits) caused by construction of the Project. CM@Risk's duty to indemnify shall be limited to fines and/or penalties resulting from citations for violations of the MS4 Permit No. CAS0108758 (and its successor permits) caused by construction of the Project.

2.24 Hazardous Materials. Unless included in the Work, if the CM@Risk encounters onsite material which it reasonably believes to contain Hazardous Materials or Waste, it shall immediately stop work and report the condition to the City. The CM@Risk will comply with all applicable environmental documents prepared for the Project, laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

2.24.1 Investigation. The City shall obtain the services of a licensed consultant to verify the presence or absence of the Hazardous Material or Waste reported by the CM@Risk and, in the event such Hazardous Material or Waste are found to be present, to verify that it has been rendered harmless. When the Hazardous Material or Waste have been rendered harmless, Work in the affected area shall resume upon written agreement of the City and CM@Risk.

2.24.1.1 The CM@Risk shall retain the services of an environmental contractor to monitor construction activities for encounters with contaminated soil known to be present at the Site. The CM@Risk shall comply with the requirements of Exhibit Q - Contaminated Soil Removal, attached hereto and incorporated into this Contract by reference.

2.24.2 Resuming Work. If the material is found to contain Hazardous Material or Waste, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless by the City. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas of the Site.

2.24.2.1 This section does not preclude the City from requesting a change in the Work and issuing a Change Order in accordance with Article 6 for the CM@Risk to remediate and remove Hazardous Material

or Waste encountered at the Site.

2.24.3 Contract Adjustments. If Hazardous Material or Waste is encountered at the Site, the CM@Risk may request an extension of Contract Time and associated costs in accordance with Article 6. Unless it is included in the Work, Hazardous Material or Waste shall be considered a differing Site condition under section 6.3 entitling the CM@Risk to Change Order under section 6.6 for associated impacts to the Contract Time and the Cost of the Work, including the reasonable additional costs of shut-down, delay and start-up, if appropriate.

2.24.3.1 In the event the CM@Risk encounters on the Site materials believed in good faith to be Hazardous Material or Waste and the CM@Risk stops work in the area affected pursuant to section 2.24, the CM@Risk shall be entitled to contract adjustment pursuant to this section even if the materials are determined not to be Hazardous Material or Waste.

2.24.4 Indemnity. To the fullest extent permitted by law, the City shall defend, indemnify and hold harmless the CM@Risk, its Subcontractors, consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of any Hazardous Material or Waste at the Site, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

2.24.4.1 If the CM@Risk is held liable for the cost of remediation of Hazardous Material or Waste solely by reason of performing Work as required by the Contract Documents, the City shall indemnify the CM@Risk for all cost and expense thereby incurred.

2.24.5 Hazardous Material in the Work. CM@Risk shall follow these requirements when working with any Hazardous Material or Waste that may be necessary to perform the Work:

2.24.5.1 Notification to employees is required when materials that contain hazardous substances or mixtures are required on the Work. A material safety data sheet shall be requested by the CM@Risk from the manufacturer of any hazardous product used.

2.24.5.2 Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer's warnings and application instructions listed on the material safety data sheet and on the product container label.

2.24.5.3 The CM@Risk shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication

information required to be made available to or exchanged between or among employers at the site, with copies to the City's Representative.

2.24.5.4 The CM@Risk shall notify the City if it considers a specified or required product or its intended usage to be unsafe. This notification must be given to the City prior to the product being ordered, or if provided by some other party, prior to the product being used or incorporated in the Work.

2.24.5.5 The cost to provide safety measures shall be included in the GMP.

2.25 Traffic Control. CM@Risk will comply with all provisions of the City of San Diego Traffic Barricade Manual and any other traffic control provisions as may be provided in the technical specifications.

2.25.1 Traffic Control Permit. The Work shall not begin in the public roadway without the approved traffic control permit. The traffic control plans, including any as part of the plans or developed by the CM@Risk, are not valid until Work dates are approved and a traffic control permit is issued by the City. The CM@Risk shall coordinate the traffic control permit application submittal with the Work so that no items of Work will be delayed. To obtain a traffic control permit, the CM@Risk shall call the Engineering Traffic Control Section, (858) 495-4741 for an appointment a minimum of 2 Working Days prior to starting Work (5 Working Days when the Work will affect a traffic signal). The CM@Risk shall provide 2 copies of the traffic control drawings as provided in the Contract Documents or prepared by the CM@Risk at the time of the appointment. Upon approval of the CM@Risk's plans, the Traffic Control Section of the Field Engineering Division will issue the permit.

2.26 Graffiti Control. The CM@Risk shall maintain all Site improvements, including any temporary facilities, equipment or other materials in a graffiti free condition throughout the construction period, until acceptance of the Project by the City. Graffiti encountered on the Site shall be removed by the CM@Risk within twenty-four (24) hours. The payment for graffiti removal shall be included in the GMP.

2.27 LEED. The CM@Risk acknowledges the City's preference for executing the Project in a manner that conserves materials and other resources. The CM@Risk and the City acknowledge that each project presents its own set of distinct opportunities for implementing the City's preferences. Accordingly, to the extent that the various Contract Documents do not require the selection of materials which are, and/or the use of construction site practices that might be less than, optimal for furthering the City's preference, the CM@Risk commits to meet with the City and to identify those areas that are wholly within the CM@Risk's control and which further the City's preference and, based upon such information, to develop a Project specific protocol for the CM@Risk to follow in the implementation thereof.

2.27.1 Council Policy 900-14. The Project is designed to comply with City Council Policy 900-14 and achieve LEED Silver Level Certification. The City and the CM@Risk shall follow the sustainable building measures in Council Policy 900-14 to the extent they may reasonably be incorporated into the Project, consistent with the Technical Specifications and Construction Drawings.

2.27.2 Documentation. CM@Risk will provide all necessary measurements, receipts and documentation requested by the City or the Design Professional to support full documentation for LEED Certification under LEED version 3.0. All necessary documentation will be submitted to City in a timely manner prior to Project completion. This documentation includes, but is not limited to, weights for recycling of construction material, air quality maintenance, fundamental commissioning and additional commissioning coordination with independent commissioning agent, chain of custody and documentation for use of certified wood products; documentation on manufactured material within 500 mile radius; providing documentation on recycled content of material; providing IAQ plan during construction; providing documentation on HVAC CFC, HCFC and halon refrigerants; and providing VOC levels of materials used. A copy of the proposed LEED points required for the LEED certification is attached as Exhibit O.

2.28 City Office Space. The CM@Risk shall provide office space and required utilities at the Site adjacent to CM@Risk's office space for City and design team members. The office space shall be large enough to accommodate at least four (4) City staff members and three (3) design staff members. The furnishing of the office space shall be provided by the CM@Risk as set forth in Exhibit P and included in the GMP.

2.28.1 Supplies and Equipment. All supplies for equipment (including paper, and printer ink) shall be provided by CM@Risk. CM@Risk shall be responsible for maintenance of all equipment supplied and shall retain ownership of all equipment at the conclusion of Project.

2.28.2 Separate Space. CM@Risk has the option of providing two separate trailers equivalent to above requirements to serve the design team separately from the City.

2.28.3 Parking. The CM@Risk shall provide four parking spaces at the Site for use by the City.

2.29 Native American, Archaeological and Paleontological Discoveries. If a Mitigation, Monitoring, and Reporting Program (MMRP) for historical, and/or paleontological resources has been prepared for the Project, then the MMRP will control in lieu of this section, unless the MMRP is silent to these issues.

2.29.1 Discovery. If discovery is made of items of Native American, archaeological and/or paleontological interest, the CM@Risk shall immediately notify the City's Representative and cease any soil disturbing activity in the area of discovery and any nearby area. The CM@Risk shall then proceed in accordance with Exhibit R - Archeological and Paleontological Monitoring,

attached hereto and incorporated into this Contract by reference. Excavation in the areas of interest shall not resume until authorized by the City's Representative in writing.

2.29.1.1 Discoveries which may be encountered include, but are not limited to, fossil resources, historic or prehistoric human bones or remains, animal bones or remains, stone implements or other artifacts and/or remnants of dwelling sites, and any items created or altered by humans more than 45 years ago, excluding pipes, laterals and appurtenances.

2.29.2 Contract Adjustments. If items of Native American, archaeological and/or paleontological interest are encountered at the Site, the CM@Risk may request an extension of Contract Time and associated costs in accordance with Article 6.

2.29.3 Notice. There are severe civil and criminal consequences for failure to treat Native American, archaeological and/or paleontological discoveries in accordance with local, state and federal laws. CM@Risk shall notify all its Subcontractors and Suppliers of the requirements of this section. Failure to notify the City's Representative upon discovery of items of Native American, archaeological and/or paleontological interest is considered a default by contractor and may result in termination of contract.

2.29.4 Indemnity. CM@Risk shall indemnify and hold the City, its officers and employees, harmless from any claims asserted or liability established, including penalties from local, state or federal agencies, arising from the mishandling of Native American, archaeological and/or paleontological resources if the CM@Risk fails to notify the City's Representative of such discoveries in accordance with this section.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate. City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

3.1.1 Plans and Drawings. City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, an electronic file of the plans and drawings. CM@Risk is responsible for all reproduction and copying services in order to provide bidders and Subcontractors with plans and specifications for the bidding and the performance of the Work.

3.1.2 Partnering. The CM@Risk shall request the formation of a partnering relationship by submitting a request in writing to the City's Representative after approval of the Contract. If the CM@Risk's request for partnering is approved by the City, scheduling of a partnering workshop, selecting the partnering facilitator

and workshop, selecting the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both Parties. The establishment of a partnering relationship will not change or modify the terms and conditions of the Contract, it will not relieve either party of the Legal Requirements of the Contract and will not subject the CM@Risk to design responsibilities other than those assumed under the Contract as a design/builder. The goals of partnering shall include:

- 3.1.2.1 The CM@Risk, the City, Design Professional and the Subcontractors actively working together as partners.
- 3.1.2.2 Avoidance of destructive confrontation and litigation among the parties.
- 3.1.2.3 Mutual understanding on how the Work is to be conducted.
- 3.1.2.4 Establishment of mutual key results to facilitate Project success.
- 3.1.2.5 Establishment of an atmosphere of team work, trust, and open communication.

3.2 City's Representative. The City's Representative will endeavor to provide City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

3.2.1 Observations. City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.2.2 Field Inspectors. The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with a special inspector pursuant to section 2.9.2.1.

3.2.2.1 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

3.2.2.2 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.2.2.3 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CM@Risk.

3.2.2.4 The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

3.2.3 Authority. The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequenced or procedures or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services. The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

3.3.1 Responsibilities. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

3.3.1.1 Will be available appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents.

3.3.1.2 Review the CM@Risk's submittals such as shop drawings, product data and samples in accordance with section 2.8.

3.3.1.3 Advise City's Representative on matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk.

3.3.1.4 Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.

3.4 City's Separate Contractors. City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents. The Contractor shall afford the City and all separate contractors reasonable opportunity for storage of materials and equipment and performance of their work. The CM@Risk shall connect and coordinate its Work and operations with the City and all separate contractors' operations as required by the Contract Documents. The City will direct the separate contractors to cooperate with the CM@Risk and to avoid actions or omissions which could interfere with or delay the activities of the CM@Risk. This shall include the City-contracted artist that may require extensive coordination of trades.

3.5 Permit Review and Inspections. If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

3.5.1 Exceptions. Regulating agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements and standards. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

Article 4 - Contract Time and Project Acceptance

4.1 Contract Time. The CM@Risk shall reach Substantial Completion of the Project within the Contract Time, which is 900 Working Days. Contract Time shall start with the Notice to Proceed for Phase 1 of the Project.

4.1.1 Adjustments. The Contract Time may be subject to adjustment in accordance Article 6 of this Contract.

4.1.2 Phase Funding. This Contract is subject to phase funding. CM@Risk must submit a Resource Allocation and Control System (R.A.C.S) cash flow from which the City can establish a phase funding schedule for the Project. The phase funded schedule will detail the number of phases, the Work under each phase and corresponding cost of each phase which together will equal the GMP. The phase funding schedule shall be attached to this Contract as Exhibit G and incorporated by this reference. Prior to commencement of Work on any phase under this contract the CM@Risk must first receive a NTP for that phase of Work. With each NTP, the City shall include a copy of a Comptroller's Certificate certifying the funds necessary for the phase are, or will be, on deposit in the City Treasury. Work commenced by CM@Risk without an NTP shall be at the CM@Risk's sole expense and exposure.

4.2 Substantial Completion. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved Project schedule and stated in the Notice to Proceed letter.

4.2.1 Notification. CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

4.2.1.1 Prior to notifying the City, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

4.2.2 Joint Inspection. Within five Working Days of City's receipt of CM@Risk's notice, City and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

4.2.3 Certification. If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) Days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties begin on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

4.2.4 Occupancy. The City may, at its option, use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in section 4.2.3, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work and (v) a temporary Certificate of Occupancy has been issued by DSD to occupy the space.

4.3 Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in section 4.2.3. If the Work is complete, the City will issue a Final Acceptance Letter to the CM@Risk and record a Notice of Completion with the County Recorder.

4.4 Liquidated Damages. CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City Two Thousand Five Hundred Dollars (\$ 2,500) as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

4.4.1 Exclusive Remedy. Liquidated damages set forth in this section is the exclusive remedy of the City for damages due to the CM@Risk's failure to reach Substantial Completion within the Contract Time. The City may, however, demand that the surety on the performance bond complete the Project if the CM@Risk is not diligently pursuing completion of the Work.

4.4.2 Limitation. The liquidated damages that accrue to the City pursuant to this section shall not exceed 50% of the Construction Fee set forth in the CM@Risk's GMP proposal.

4.5 Project Schedule. The project schedule approved as part of the GMP shall be updated and maintained throughout the Work by the CM@Risk.

4.5.1 Effect on Contract Time. The project schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such time may be adjusted in accordance with the Contract Documents.

4.5.2 Submission of Updates. An updated project schedule shall be submitted monthly to the City as part of each Payment Request, and in the case that an event causes a substantial change in the schedule.

4.5.3 Status Reports. CM@Risk shall provide City with a monthly status report with each project schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work within the Contract Time. The monthly status report should include a cost update, use of contingency, status of all RFI's, status of all PCO's and CO's, and a safety report.

4.5.4 Schedule Transmittal Letter. With each schedule submittal the CM@Risk shall include a transmittal letter including the following:

4.5.4.1 Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.

4.5.4.2 Current and anticipated delays including the cause of the delay, corrective action and schedule adjustments to correct the delay, and knows or potential impact of the delay on other activities, milestones, and by the date of Substantial Completion. Failure to list a delay on an interim schedule submittal shall not preclude the CM@Risk from later providing the information when it becomes available.

4.5.4.3 Changes in construction sequence.

4.5.4.4 Pending items and status thereof including but not limited to time extension requests, outstanding RFI's, outstanding Changer Orders, and potential Change Orders

4.5.4.5 Substantial Completion date status. If ahead of schedule, the number of calendar days ahead. If behind schedule, the number of calendar days behind.

4.5.4.6 Other project or scheduling concerns.

4.5.4.7 Use of CM@Risk Contingency.

4.5.4.8 Financial status, percent complete, and graph of progress.

4.5.5 City Review. City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

4.5.6 Critical Path Method. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the critical path. The anticipated time for submittals and shop drawings submittal shall also be included in CPM in order to identify the submittal review process timeline and schedule restrictions on design review.

4.5.6.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

4.5.6.2 The CPM diagram schedule shall indicate all relationships between activities.

4.5.6.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4.5.6.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

4.5.6.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

4.5.6.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.

4.5.7 Occupancy Requirements. The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

4.5.8 Float. Float time shall be as prescribed below.

4.5.8.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

4.5.8.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Because Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

4.5.8.3 Because Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5 - Guaranteed Maximum Price

5.1 Contract Price. The City shall pay the CM@Risk the Contract Price for Final Completion of the Project. The Contract Price is determined at the time of Final Completion by the sum of the Guaranteed Maximum Price plus any Change Orders, less any unused Owner's Contingency, CM@Risk's Contingency, taxes and allowances. The Contract is phase funded.

5.1.1 Compensation Under Each Phase. Total compensation to be paid to the CM@Risk by the City for all Work performed under each phase of this Contract shall not exceed the amount specified in the Phase Funding Schedule for each phase unless said amount is modified, in writing, by an amendment of this Contract.

5.1.2 Work to be Performed Under Each Phase. The Work to be performed under this Contract shall be performed during the separate and specific phases identified in the Phase Funding Schedule.

5.1.3 Work and Compensation for Funding Phases After Funding Phase 1. It is expressly understood by and between the City and CM@Risk that the Work and compensation for the funding phases after Funding Phase 1 identified in the Phase Funding Schedule are subject to funds being appropriated and authorized by the Mayor and San Diego City Council for said construction and compensation. The City's obligations and the CM@Risk's obligations under this multi-phase Contract which will be funded by multi-phase funding authorizations are as follows:

5.1.3.1 Funds available for performance are described in the Phase Funding Schedule. The amount of funds available at award is not considered sufficient for the performance required for any funding phase other than Funding Phase 1. When additional funds are available for the full requirements of the next funding phase, the City shall, not later than the date specified (unless a later date is agreed to), so notify the CM@Risk in writing. The City shall also modify the amount of funds as available for contract performance as described in the Phase Funding Schedule. This procedure shall apply for each successive funding phases.

5.1.3.2 The City is not obligated to the CM@Risk for any amount over that specified in the Phase Funding Schedule as available for contract performance and authorized by the Mayor and San Diego City Council.

5.1.3.3 The CM@Risk is not obligated to incur costs for the performance of Work required for any funding phase after Funding Phase 1, unless and until written notification is received from the City of an increase in the availability of funds. If so notified, the CM@Risk's obligation shall increase only to the extent the contract performance is required for the additional funding phases for which funds are made available.

5.1.3.4 If the Contract is terminated under the "Termination for Convenience" clause, the settlement proposal shall be determined pursuant to procedures established in Article 9. "Work under this Contract," in that clause means the work under specific funding phases for which funds have been made available. If the Contract is terminated for default, the City's rights under this contract shall apply to the entire multi-phase requirements.

5.1.3.5 Notification to the CM@Risk of an increase or decrease in the funds available for performance of this Contract under another clause (e.g., an "option" or "changes" clause), shall not constitute the notification contemplated in section 5.1.3.1.

5.2 Guaranteed Maximum Price. The Guaranteed Maximum Price is \$ _____ as shown in Exhibit B and composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The GMP shall be supported by a detailed itemized breakdown that shows the expected hard construction costs for each of the major trades and Project components which will include labor, material, expenses, equipment costs and a reasonable contingency. The GMP may be adjusted in accordance with Article 6 of this Contract. The GMP proposal is not intended to include any changes in scope, systems, kinds, qualities, quantities of materials, finishes or equipment from that shown or reasonably inferable from the information stated in the design documents upon which the GMP was based, subject to the qualifications and assumptions to that GMP, all of which, if required would warrant an adjustment to the Contract Price.

5.2.1 Cost of the Work. The Cost of the Work is defined in Article 1 and determined by the actual cost incurred by the CM@Risk, and is a not-to-exceed reimbursable amount.

5.2.2 General Condition Costs. The General Conditions Costs is defined in Article 1 and determined by a firm fixed lump sum.

5.2.3 Allowances. CM@Risk shall be reimbursed with no markup for the actual cost of the following components, which shall be paid for the out of the allowances provided in the GMP including, but not limited to, the following:

5.2.3.1 Photovoltaic System.

5.2.3.2 Permits per section 2.4, at the amount charged by the permit-issuing agency.

5.2.3.3 Shelving.

5.2.3.4 Automatic Materials Handling System.

5.2.3.5 Furniture, Fixtures and Equipment.

5.2.4 Taxes. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and is a not-to-exceed reimbursable amount. The City is not exempt from sales tax.

5.2.5 CM@Risk Contingency. CM@Risk's Contingency is defined in Article 1 and may be used at the discretion of the CM@Risk only for the purposes set forth in this section. CM@Risk shall submit a written description to the City's Representative within thirty (30) Days after each time the CM@Risk Contingency is used.

5.2.5.1 Scope gaps between trade Subcontractors.

5.2.5.2 Contract default by trade Subcontractors.

5.2.5.3 Cost of corrective work not provided for elsewhere in this Contract. The CM@Risk Contingency shall not be used for corrective work required due to CM@Risk's and/or any Subcontractor's and/or Design Subcontractor's failure to perform in accordance with the terms of this Agreement and/or in compliance with the Technical Specifications or Construction Drawings, or uninsured losses resulting from the gross negligence or willful misconduct of the CM@Risk or its Subcontractors and Suppliers.

5.2.5.4 Errors, discrepancies or omissions in the Technical Specifications or the Construction Drawings, except for errors, discrepancies or omissions that the CM@Risk should have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto.

5.2.5.5 Costs associated with resolving bid protests.

5.2.5.6 When the CM@Risk utilizes CM@Risk Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.

5.2.6 Construction Fee. Except as otherwise expressly provided in this Agreement, CM@Risk shall be compensated a fixed fee in the amount as specified in the GMP, as full and complete compensation for performance of all services and obligations under this Agreement. Unless otherwise expressly provided in this Agreement, the fixed fee shall include full compensation for all costs of any type incurred by CM@Risk in performing all services and obligations under this Agreement, including but not limited to the following:

5.2.6.1 Architectural, engineering, and other professional consultants, including but not limited to structural, civil, mechanical, electrical engineers, and lighting consultants may be required for subcontracted design/build services.

5.2.6.2 Estimating, value engineering and construction management.

5.2.6.3 Construction supervision and Project management personnel, including but not limited to superintendents, Project managers, Project secretaries, Project engineers, Project accountants, and all other CM@Risk personnel wherever located.

5.2.6.4 All on-site and off-site equipment, supplies and facilities, including but not limited to, computers, estimating, dictating, communication and accounting equipment, offices space, trailers and storage facilities and other general condition costs not considered hard construction costs.

5.2.6.4 All home-office and field overhead costs of any type including document control and retention.

5.2.6.5 All business license costs.

5.2.6.6 All profit CM@Risk will earn under this Agreement.

5.2.7 Owner's Contingency. Owner's Contingency is funds in the amount of \$_____ to be used at the discretion of the City to cover any increases in Project costs that result from City directed changes, unforeseen site conditions or design omissions which the CM@Risk could NOT have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto.

5.2.7.1 Markups for Construction Fee, General Conditions Costs, bonds, and insurance will be applied by the CM@Risk at the time that Owner's Contingency is used. The GMP Proposal shall express the Construction Fee, General Conditions Costs, bonds, and insurance each as a percentage of the Cost of the Work for purposes of calculating the markup. There shall be no further markup for use of the Owner's Contingency except for Subcontractor and Supplier markup set forth in section 6.7.3.

5.2.7.2 Use of the Owner's Contingency shall be memorialized by a written Field Order determined and processed in accordance with Article 6. Changes to the Contract Time, the GMP, and/or other terms and conditions of this Contract must be processed as Change Orders.

5.2.7.3 Any surplus in the Owner's Contingency fund at the completion of the Project shall revert to the City.

5.3 Final Accounting. As part of its application to the City for final payment and for determination of the Contract Price, the CM@Risk shall submit a final accounting of all payments received towards the GMP. Any unused Owner's Contingency, CM@Risk's Contingency, taxes, allowances, and all other remaining unexpended funds and contingencies shall be deducted from the GMP and credited to the City.

Article 6 - Changes to the Contract Price and Time

6.1 Price Escalation of Materials. If during the performance of this Contract, the CM@Risk's cost to procure materials for the Project significantly increases over the prices used to calculate the GMP through no fault of the CM@Risk or its Subcontractors and Suppliers, the CM@Risk may request an increase in the Contract Price in accordance with this article. For purposes of this section, the cost to procure materials "significantly increases" if the CM@Risk is obligated to increase the price paid for materials under the terms of its subcontracts with Subcontractors or Suppliers.

6.2 Delays to the Work. If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its reasonable control and due to no fault of its own or Subcontractors or others for whom CM@Risk is contractually or legally responsible, the Contract Time for performance shall be extended by Change Order equivalent to the length of delay.

6.2.1 Notice. The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. The CM@Risk must provide written notice of the request to the City within seven (7) Days of the beginning of the event causing the delay. In the case of a continuing delay only one request is necessary. The notice must be accompanied by a critical path analysis showing how the event impacts the date of Substantial Completion.

6.2.2 Events Beyond the Control of CM@Risk. By way of example, events that will entitle CM@Risk to an extension of the Contract Time include, but are not limited to, acts or omissions of City or anyone under City's control (including the Design Professional or their representatives and consultants, separate contractors), City directed changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, abnormal weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions or otherwise affects the area in which the Project is located and/or the CM@Risk's labor and/or supply chain, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties or by delay authorized by the Contract Documents, and other acts of God.

6.2.2.1 If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions caused the Work to be stopped, and that weather conditions had an adverse effect on the scheduled Substantial Completion.

6.2.3 Delays Caused by CM@Risk. The Contract Time shall not be extended for unexcused delays caused by the CM@Risk, its Subcontractors or others for which the CM@Risk is contractually or legally responsible. Permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

6.2.4 Compensation. In addition to CM@Risk's right to a time extension for those events set forth in this section, CM@Risk shall also be entitled to compensation for the actual cost associated with the delay provided, however, that compensation shall not be adjusted for those events set forth in this section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions that cause the Work to be stopped, and other acts of God.

6.2.4.1 Notwithstanding sections 6.2.4 and 6.2.5, the CM@Risk is entitled to compensation for the actual cost of delays to the critical path associated with adverse weather conditions that exceed the number of estimated "rain days" included in the CM@Risk's approved Project schedule.

6.2.5 Force Majeure. In the event the Work is delayed due to causes which are outside the control of both parties and their agents, and could not be avoided by the exercise of due care, which may include, but is not limited to, delays by regulating agencies, wars, floods, adverse weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions or otherwise affects the area in which the Project is located and/or the CM@Risk's labor and/or supply chain, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties, and other acts of God, both parties will be entitled to an extension in time equivalent to the length of delay. Neither party will be entitled to compensation from the other for *force majeure* events.

6.3 Differing Site Conditions. If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Cost of the Work and/or Contract Time to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.

6.3.1 Notice. Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) Days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.4 Errors, Discrepancies and Omissions. If the CM@Risk observes errors, discrepancies or omissions in the Contract Documents, it shall promptly notify the City Representative and request clarification. If the CM@Risk proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk.

6.4.1 Corrective Alternatives. CM@Risk shall prepare a cost analysis for each error, discrepancy, or omission to identify the cost of the work around or corrective action and will work cooperatively with the City to determine the cost and schedule impact of all corrective measures before proceeding. The City must approve the selected alternative prior to the CM@Risk proceeding with corrective measures.

6.4.2 Risk to CM@Risk. The CM@Risk shall NOT be entitled to an increase in the Cost of the Work or the GMP, or an extension in Contract Time, for errors, discrepancies or omissions in the Technical Specifications or the Construction Drawings that the CM@Risk should have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto. Discovery of any such errors, discrepancies or omissions shall not relieve the CM@Risk of its obligation to complete the Project in accordance with this Contract.

6.5 City Requested Change in Work. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the

City's best interest. Such alterations and changes shall not invalidate this Agreement nor release the surety, and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.5.1 Design Changes. CM@Risk may provide alterations of a design nature only if authorized in writing, in advance, by the City. In the event of a change of this nature, CM@Risk will estimate the cost of the Change/Field Order, assist City in developing drawings and specifications as necessary, solicit a revised bid, negotiate with the Subcontractor, present a recommendation for a Change/Field Order to City, and implement construction as approved by City.

6.5.2 Request for Proposal. The City will request a proposal for a change in Work from CM@Risk, and an adjustment in the Cost of the Work, GMP and/or Contract Time shall be made based on a mutual agreed upon cost and time.

6.6 Change Orders and Field Orders. Except as otherwise provided in this Contract, all changes or alterations to the Work that change the GMP or Contract Time, or change the terms and conditions of this Contract, shall be memorialized by a written Change Order. All other changes may be processed as Field Orders. Compensation included in Change/Field Orders shall include all costs associated with the delay or change in the Work, if any, including all markup, overhead, home and field office overhead, taxes, fees, cumulative effect of Change/Field Orders and all other costs necessary to complete the changed Work.

6.6.1 Negotiation. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a delay or change in the Work. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change/Field Order reflecting the terms of the adjustment.

6.6.2 Terms. Unless otherwise indicated in the Change Order, all changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents. All changes in Work authorized by Field Order shall be performed under the conditions of the Contract Documents.

6.6.3 Change/Field Order Plan. The CM@Risk shall develop a Project-specific Change/Field Order Administration Plan (CFOA Plan) for review and approval of the City. Upon written approval of the CFOA Plan by the City, the CM@Risk shall initiate implementation.

6.6.3.1 The CFOA Plan shall define the required Change/Field Order procedures, including requirements for requesting, developing, approving, recording, and filing.

6.6.3.2 The CFOA Plan shall define the procedure by which the Change/Field Order information is distributed to all affected parties.

6.6.3.3. The CFOA Plan shall identify all individuals and firms assigned to implement the CFOA Plan, and schedules for processing any action

occurring under the Plan from first knowledge or notice of change through final execution of the Change/Field Order.

6.6.3.4 The CFOA Plan shall include a flow chart with procedures and duration of each step.

6.7 Contract Price Adjustments. The increase or decrease in the Cost of the Work or its components resulting from a change in the Work shall be determined by one or more of the following methods:

6.7.1 Unit Prices. Unit prices set forth in the Agreement, Subcontractor bids, or as subsequently agreed to between the parties.

6.7.1.1 If unit prices are set forth in the Contract Documents, Subcontractor bids, or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

6.7.2 Lump Sum. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City.

6.7.3 Markups. Except for changes to the GMP or use of the Owner's Contingency as set forth in section 5.2.7.1, there shall be no markup for the CM@Risk for adjustments to the Cost of the Work. The markups for Subcontractors and Suppliers shall not exceed:

Component	Overhead	Profit
Labor	10%	10%
Material	10%	5%
Equipment	10%	5%

6.7.3.1 Markup for overhead and profit includes full compensation for superintendence, insurance premiums, taxes, field office expense, extended overhead, home office overhead, and any other items of expenses (e.g., Change/Field Order estimating and preparation cost, claims preparation cost, schedule analysis, project management, and field engineering). Extended overhead shall be any and all costs incurred either in the field or at the home office resulting from changed Work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the changed Work.

6.7.3.2 Work paid under allowance bid items is not subject to markup by the CM@Risk, but is subject to markup by Subcontractors and Suppliers.

6.7.3.3 When all or any part of the changed Work is performed by a Subcontractor or Supplier, the markup specified herein shall be applied to the labor, materials, and equipment costs of the Subcontractor/Supplier of one tier only. Regardless of the number of hierarchical tiers of Subcontractors or Suppliers, the markup may be applied one time only to the performing Subcontractor's/Supplier's total cost.

6.7.4 Bonds. To the sum of the costs and markups provided for in this section, 1% of the cost of the Change/Field Order shall be added as compensation for the increase in the Subcontractor's bond premium caused by the changed Work.

6.7.5 Deductive Change/Field Orders. For changed Work that reduces the Cost of the Work, the reduction in compensation shall be determined in accordance with this section, including a Subcontractor markup reduction in overhead and profit.

6.7.6 Disputes. If the parties are unable to agree on the compensation or the extension in Contract Time for changed Work, CM@Risk shall proceed to perform the disputed Work, conditioned upon City issuing a written order to CM@Risk specifying City's interpretation of the Work that is to be performed and directing the CM@Risk to proceed in accordance with either of the following provisions, at the sole discretion of the City:

6.7.6.1 The City will issue a unilateral Change/Field Order (not signed or approved by the CM@Risk) identifying the additional or deleted Work, the additional compensation and the extension in Contract Time, if any, that the City reasonably believes is due to the changed Work. The City shall pay the CM@Risk in accordance with the unilateral Change/Field Order pending a resolution of the disputed Work in accordance with Article 8.

6.7.6.2 If the disputed Work is not covered by unit prices in the GMP, the City will compensate the CM@Risk on a time and materials basis, calculated in accordance with sections 3-3.2 and 3-3.3 of the 2009 edition of *Standard Specifications for Public Works Construction* (Greenbook) as amended by the 2009 City Supplement, except that section 6.7.3 of this Contract shall be used to determine markup instead of 3-3.2.3 of the Greenbook. Disputes over extensions of Contract Time shall be resolved in accordance with Article 8, but the cost of the disputed Work determined on a time and materials basis shall be final and binding on both parties.

6.8 Emergencies. In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in compensation and/or Contract Time resulting from emergency work shall be determined as provided in this Article.

Article 7 - Procedure for Payment

7.1 Compensation. For and in consideration of the faithful performance of the Work as set forth in the Contract Documents, the City agrees to pay the CM@Risk an amount as determined by this Contract, not to exceed the GMP. Payment for the specific Work under this Agreement will be made in accordance with payment provisions detailed below.

7.1.1 Schedule of Values. Within ninety (90) Days after the issuance of the NTP, CM@Risk shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.

7.1.2 Updated Project Schedule. At least five (5) working days prior to the date established for a Payment Request, the CM@Risk shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.

7.1.3 Payment Requests. Payment Requests shall be made monthly in arrears, commencing thirty (30) Days after the date of the NTP.

7.1.3.1 The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request.

7.1.3.2 The CM@Risk may include the entire cost of Payment and Performance Bond premiums in the first Payment Request.

7.1.3.3 The CM@Risk may include up to 50% of the cost of insurance premiums and the entire cost of Subguard (Subcontractor Default Insurance) premiums in the first Payment Request.

7.1.4 Stored Equipment and Materials. The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.

7.1.4.1 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

7.1.4.2 For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within San Diego County and be accessible for City's inspection. The CM@Risk must protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site. The CM@Risk shall also

provide time-dated pictures of all material stored outside of the City of San Diego.

7.1.4.3 All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.2 Progress Payments. The City shall pay the CM@Risk progress payments no later than thirty (30) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained pursuant to stop notices or this Contract.

7.2.1 Withholding. If City determines that CM@Risk is not entitled to all or part of a Payment Request for the reasons set forth in this paragraph, it will notify CM@Risk in writing within seven (7) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to address the City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof. The City may withhold payment in response to a Payment Request because of subsequently discovered evidence which may nullify the whole or a part of a Payment Request previously issued, to such extent as may be necessary in the City's opinion to protect it from loss for which the CM@Risk is responsible, including loss resulting from acts and omissions of the CM@Risk or because of any of the following:

7.2.1.1 Defective Work not remedied within a reasonable period of time following written notice from the City and provided the amount of such claim, when added to other outstanding claims, exceeds the amount of the retention held by the City.

7.2.1.2 Uninsured third-party claims filed, or upon reasonable evidence indicating the probability of such claims being filed, for which the CM@Risk is solely responsible pursuant to the Contract Documents and provided the amount of such claims, when added to other outstanding claims, exceed the amount of any retention held by the City.

7.2.1.3 Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP where the extent of the overrun is an amount greater than the amount of any retention held by the City.

7.2.1.4 Uninsured damage to the City's property for which the CM@Risk is solely responsible pursuant to the Contract Documents and provided that the amount of such claim, when added to other outstanding claims, exceeds the amount of any retention held by the City.

7.2.1.5 Repeated failure to perform the Work in accordance with the Contract Documents.

7.2.1.6 Repeated failure of the CM@Risk to provide an appropriate Project Schedule or an appropriate Project Schedule update pursuant to this Contract.

7.2.1.7 Written demand by the CM@Risk's surety.

7.2.1.8 Failure of the CM@Risk to indemnify the City as required by this Contract.

7.2.1.9 Failure of the CM@Risk to timely submit Equal Opportunity Contracting Program reports required by section 2.3.5, but only until such reports are submitted and approved by the City.

7.2.1.10 As required by California Civil Code section 3186 when stop notices are received by the City, in the amount of 150% of the amount claimed in the stop notices.

7.2.1.11 Failure of the CM@Risk to abide by any other provision of this Contract, but only when such provision specifically states that withholding of progress payments by the City is permitted.

7.2.2 Retention. City will retain five percent (5%) of each progress payment to ensure successful completion of the Work, exclusive of General Conditions and the Construction Fee. The City may further reduce retention to two percent (2%), at its discretion, upon receiving a Certificate of Occupancy and consent of surety.

7.2.2.1 The CM@Risk may elect to receive 100 percent of payments due under the Contract Documents from time to time, without retention of any portion of the payment by the City, by depositing securities of equivalent value with the City in accordance with the provisions of section 22300 of the Public Contract Code. Such securities, if deposited by the CM@Risk, shall be valued by the City, whose decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CM@Risk and the City.

7.2.2.2 Alternatively, upon request by the CM@Risk the City shall make payment of retentions earned directly to an escrow agent at the expense of the CM@Risk, in accordance with section 22300 of the Public Contract Code.

7.2.2.3 The City shall not withhold retention from payments to the CM@Risk for bonds or insurance.

7.2.2.4 The City shall release the retention for payments for Site excavation and shoring ninety (90) Days after the excavation and shoring work is complete if the CM@Risk provides the City with an executed release of claims from the affected Subcontractors, consent of surety, and provided no stop notices have been filed associated with the excavation and shoring work.

7.3 Final Payment. Within sixty (60) days after Substantial Completion of the entire Work and receipt of an application for final payment from the CM@Risk, City shall release all retained funds less an amount of one hundred and fifty percent (150%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, and any outstanding stop notices.

7.3.1 Cessation of Labor. If there has been a cessation of labor for a continuous period of sixty (60) Days due solely to the City's failure to issue a NTP for the subsequent phase of the Work, the CM@Risk may submit an application for final payment which the City shall process in accordance with this section.

7.3.2 Final Payment Request. At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

7.3.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests, other than any known outstanding stop notices which the CM@Risk shall list.

7.3.2.2 A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims except those claims previously made in writing to City and remaining unsettled at the time of final payment which the CM@Risk shall list with the amount of each claim.

7.3.2.3 Written consent of CM@Risk's surety to the City's release of retention and making final payment.

7.4 Prompt Payment. CM@Risk shall pay its Subcontractors and Suppliers within ten (10) Days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment.

7.4.1 Retention and Withholding. The CM@Risk may retain or withhold a proportionate amount of the funds retained or withheld from the CM@Risk by the City attributable to the Work provided by the Subcontractors and Suppliers. Any reduction of retention or withholding by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactorily. CM@Risk shall pay Subcontractors or Suppliers the released retention and withholding within seven (7) Days of receipt of payment from the

City pursuant to Public Contract Code section 7107. No contract between CM@Risk and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

7.4.2 Violations. If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

7.4.2.1 Hold the CM@Risk in default under this Agreement.

7.4.2.2 Withhold future progress payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions.

7.4.2.3 Debarment pursuant to the San Diego Municipal Code.

7.4.2.4 Terminate this Contract pursuant to Article 9.

7.4.3 No Waivers. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this section or of any of the terms or provisions thereof unless expressly waived by the City in writing.

7.4.4 Subcontracts. CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.5 Record Keeping and Finance Controls. The City, its authorized representative, and/or the appropriate state agency, may audit the CM@Risk's records to verify the accuracy and appropriateness of all Payment Requests, pricing data, including data used to negotiate the GMP, Contract Documents and any Change Orders, and any other documents related to the Project in accordance with Municipal Code section 22.3808(d). The CM@Risk shall make its records available to the City for inspection and copying during reasonable business hours.

7.5.1 Record Retention. Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for four years after Substantial Completion of the Project.

7.5.2 Adjustments. The City reserves the right to decrease the Cost of the Work and/or payments made under this Agreement if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data. The amount of the decrease

shall be equal to the amount of the error. City reserves all rights and remedies available under the law for such false or misleading disclosures.

7.5.3 Subcontracts. The CM@Risk shall include a similar provision in all of its agreements with Suppliers and Subcontractors providing Work for the Project to ensure the City, its authorized representative, and/or the appropriate state agency, has access to the Suppliers' and Subcontractors' records to verify the accuracy of cost and pricing data.

Article 8 - Claims and Disputes

8.1 Claims. The CM@Risk shall submit a claim to the City if a dispute occurs between the City's Representative and the CM@Risk that arises from or relates to the Contract or the Work. The claim shall be in writing and set forth all relief to which the CM@Risk asserts it is entitled as a result of the event(s) giving rise to the dispute.

8.1.1 Exclusive Process. The CM@Risk shall process all disputes with the City in accordance with this section. The CM@Risk's failure to process a claim in accordance with this section shall constitute a waiver of all relief associated with the dispute. Claims shall be subject to audit by the City in accordance with section 7.5 of this Contract. CM@Risk shall continue to perform the services and the Work and maintain the Schedule during any dispute proceedings and City will continue to make progress payments for undisputed services and Work.

8.1.2 Tolling. The claims process in this section shall toll the CM@Risk's statutory obligation to present claims under the California Government Code until the conclusion of mediation pursuant to this Article.

8.1.3 Deadline to Submit Claim. The CM@Risk shall promptly, but in no event later than sixty (60) Days after the event(s) giving rise to the claim, deliver the claim to the City. Ongoing discussions or negotiations with the City's Representative shall not extend the deadline to submit a claim unless an extension is granted by the City's Representative in writing.

8.1.4 Claim Certification Requirements. If the claim seeks an increase in compensation, the Contract Time, or both, the CM@Risk shall submit with the claim an affidavit certifying that:

8.1.4.1 The claim is made in good faith and covers all costs and delays to which the CM@Risk is entitled as a result of the event(s) giving rise to the claim.

8.1.4.2 The amount claimed accurately reflects the adjustments in compensation, the Contract Time, or both to which the CM@Risk believes it is entitled.

8.1.4.3 All supporting costs and pricing data are current, complete, and represent the CM@Risk's best knowledge and belief available at the time

the claim is submitted. The CM@Risk shall supplement information required herein as or should additional cost and pricing data become available. The CM@Risk shall ensure that the affidavit is executed by an official who has the authority to legally bind the CM@Risk.

8.1.5 Initial Determination. An initial determination is the City's written approval or denial of a claim from the CM@Risk. Within thirty (30) Days of receipt of a claim, the City will deliver an initial determination to the CM@Risk. The City will not consider and will return to the CM@Risk any claim that does not conform to this section.

8.1.5.1 The CM@Risk may request a settlement meeting after it submits a claim to the City. A settlement meeting shall be held within twenty (20) Days of receipt of the CM@Risk's written request unless otherwise agreed by the parties. This meeting will be an opportunity for the CM@Risk to explain its claim to the City. The meeting shall be attended by an officer of the CM@Risk and representative of the City of at least Deputy Director level. If a settlement cannot be reached, the City will issue an initial determination. The time for issuing an initial determination shall be tolled by the number of days between the date a request for a settlement meeting is received by the City and the date the settlement meeting is held.

8.1.6 Final Determination. If the CM@Risk disagrees with the initial determination, the CM@Risk may request a final determination. The CM@Risk's request shall be in writing and shall be delivered to the City within thirty (30) Days from CM@Risk's receipt of the initial determination. The City will deliver a final determination to the CM@Risk within thirty (30) days after receipt of the CM@Risk's written request. A final determination is the City's final written decision on the CM@Risk's claim, signed by a representative of the City of at least Director level, which is binding on the CM@Risk unless the CM@Risk notifies the City in writing of its objection within twenty (20) Days after receipt of the final determination, and files a "Request for Mediation" pursuant to this Article. Failure to give notice of objection within twenty (20) Days shall be deemed to be a waiver of its right to pursue the claim.

8.2 Mandatory Non-binding Mediation. If the CM@Risk disagrees with the City's final determination, the CM@Risk may request mediation by notifying the City in writing within twenty (20) Days after receipt of the final determination. The parties will endeavor to settle the claim in an amicable manner, using mandatory non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed to by the parties. Mediation is mandatory before either party may have recourse in a court of law.

8.2.1 Mediation Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of

any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

8.2.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the claim. The mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the American Arbitration Association or any other agreed upon mediator.

8.2.3 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the claim, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorney(s), witnesses or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

8.2.4 Mediation Results. Any resultant agreements from mediation shall be documented in writing. Mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

8.3 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Work provided by the CM@Risk under this Contract, upon the City's request the CM@Risk agrees to assist in resolving the dispute or litigation. The CM@Risk's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution, litigation, or both.

8.3.1 Compensation for Mandatory Assistance. The City will reimburse the CM@Risk for reasonable fees and expenses incurred by the CM@Risk for any required assistance rendered in accordance with this section.

8.3.1.1 If the City reasonably determines that the basis of the dispute or litigation in which these fees and expenses were incurred was the result of the conduct of or failure to act by the CM@Risk, Subcontractors, Suppliers or their respective agents, officers, and employees, in part or in whole, the City shall be entitled to be reimbursed a proportionate amount of any payments made for these fees and expenses. Reimbursement may be through any legal means necessary, including the City's withholding of payment.

8.3.1.2 Reasonable attorneys' fees incurred in providing the City with dispute or litigation assistance are reimbursable only if the CM@Risk is

not a party to the same dispute or litigation for which the City requested mandatory assistance, and only to the extent the attorneys' work is reasonably related to the assistance provided to the City.

8.3.1.3 Any dispute between the City and the CM@Risk over compensation for mandatory assistance shall be submitted to mandatory non-binding mediation in accordance with section 8.2.

Article 9 – Suspension and Termination

9.1 Suspension of Work. The City may, at any time and without cause, suspend the Work or any portion thereof for a continuous period of not more than sixty (60) Days by notice in writing to the CM@Risk. The CM@Risk shall resume the Work on receipt from the City of a notice to resume the Work. If the Work is suspended by the City, the City shall not unreasonably deny a request for a change in the Contract Time or additional compensation, or both, directly attributable to the suspension not resulting from the CM@Risk's actions or inactions as provided in section 6.2 of this Contract.

9.2 Termination for Convenience. The City may terminate the CM@Risk's performance of Work under this Contract, in whole or, from time to time, in part, only if the Mayor and City Council do not appropriate sufficient monies to fund the Contract. The City will terminate the Contract by delivering a notice of termination in writing to the CM@Risk, specifying the extent of termination and the effective date. In the event the City terminates for its convenience, the following provisions will also apply to such termination in addition to any provision of the Contract permitting such termination and shall also survive the termination.

9.2.1 Notice of Termination. Unless otherwise directed by the City, upon receipt of the notice of termination the CM@Risk shall immediately proceed as follows:

9.2.1.1 Stop all Work immediately or as specified in the notice.

9.2.1.2 Immediately cease placing further subcontracts for labor, materials, services, or facilities, except as necessary to complete any authorized portion of the Work.

9.2.1.3 Immediately terminate all subcontracts to the extent they relate to the Work terminated.

9.2.1.4 With approval by the City, settle all outstanding obligations arising from the termination of subcontracts, the approval of which will be final for purposes of this clause.

9.2.1.5 Transfer the title and deliver to the City, completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Contract has been completed, would be required to be furnished to the City. The City also, for itself and its

successors and assigns, agrees that all rights and title to all work product of the CM@Risk for which the CM@Risk has not been paid, if any, shall revert to, or remain with, the CM@Risk and the City agrees to refrain from using any such work product, bidders and/or Subcontractors and Suppliers in connection with the Project.

9.2.1.6 Complete performance of the Work not terminated, if any.

9.2.1.7 Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project, including property related to this Contract that is in the possession of the CM@Risk and in which the City has or may acquire an interest.

9.2.2 Removal of City Property. The CM@Risk may request the City to remove any City's property being stored by CM@Risk or enter into an agreement for its storage. Within sixty (60) Days, the City will accept possession of property and remove it or enter into a storage agreement.

9.2.3 Termination Settlement Proposal. After termination, the CM@Risk shall submit a final termination settlement proposal to the City's Representative. The CM@Risk shall submit the proposal promptly, but not later than six (6) months from the effective date of termination, unless extended in writing by the City within this six (6) month period. However, if the City determines that the circumstances justify it, a termination settlement proposal may be received and acted on after six (6) months or any extension.

9.2.3.1 If the CM@Risk fails to submit the proposal within the time allowed, the City may, in good faith, determine, on the basis of information available, the fair and reasonable amount, if any, due the CM@Risk as a result of the termination and pay the amount determined.

9.2.3.2 If the CM@Risk does not agree that the amount determined by the City is fair and reasonable, the CM@Risk must submit a claim and pursue the dispute resolution process in Article 8.

9.2.4 Compensation for Termination. Subject to section 9.2.3, the CM@Risk and the City may agree upon the whole or any part of the amount to be paid because of the termination for convenience. However, the agreed amount may not exceed the total amount of phase funding approved by the Mayor and City Council as reduced by the amount of payments previously made and the Cost of the Work not terminated. Compensation for termination may include elements not originally included in the Cost of the Work such as:

9.2.4.1 Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination of settlement proposals and supporting data.

9.2.4.2 The termination and settlement of subcontracts.

9.2.4.3 Storage, transportation, and other costs incurred when reasonably necessary for the preservation, protection, or disposition of property in which the City has or may acquire an interest.

9.2.4.4 A reasonable allowance for premature demobilization from the Site.

9.2.5 Failure to Agree on Compensation. If the CM@Risk and City fail to agree on the amount to be paid because of the termination for convenience, the City shall pay the CM@Risk the fair and reasonable amounts determined in good faith by the City as follows, but without duplication:

9.2.5.1 The cost of completed Work accepted by the City and not previously paid for, adjusted for any saving of freight and other charges.

9.2.5.2 The costs incurred towards the performance of the Work terminated, including initial costs, and preparatory expense allocable thereto.

9.2.5.3 The fair and reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract.

9.2.6 Payment for Property Destroyed, Lost Stolen or Damaged. Except to the extent that the City expressly assumed the risk of loss, the City shall exclude from the amounts payable to the CM@Risk the fair value of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the City.

9.2.7 Deductions. In arriving at the amount due the CM@Risk for termination for convenience, there shall be deducted:

9.2.7.1 All advances or other payments to the CM@Risk under the terminated portion of this Contract.

9.2.7.2 Any claim which the City has against the CM@Risk under this Contract.

9.2.7.3 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the CM@Risk or sold pursuant to termination and not recovered by or credited to the City.

9.2.8 Records Relating to Termination. Unless otherwise provided, the CM@Risk shall maintain all records and documents relating to the terminated portion of this Contract for four (4) years after final settlement. This includes all records bearing on the CM@Risk's costs and expenses under this Contract. The CM@Risk shall make these records and documents available to the City, at the CM@Risk's office, at all reasonable times, without charge. Photographs,

microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

9.3 Termination By CM@Risk. The CM@Risk may terminate this Contract upon fourteen (14) Days written notice to the City under the following circumstances:

9.3.1 Suspension Exceeding Sixty Days. If the Work has been suspended under section 9.1 for more than sixty (60) consecutive days through no fault or negligence of the CM@Risk.

9.3.2 Failure to Pay. If the City should fail to pay the CM@Risk any uncontested portion of a progress payment within ninety (90) Days after receipt of a Payment Request.

9.3.3 Waiver of Claims. If the CM@Risk terminates the Contract pursuant to this section, the CM@Risk may not recover any profits or overhead post-termination it may have anticipated had the Contract not been terminated. Nothing herein shall serve to limit claims the CM@Risk may have against the City prior to the CM@Risk's termination, provided such claims were submitted to the City pursuant to Article 8 prior to termination by the CM@Risk. Termination by the CM@Risk shall not relieve either party of its obligation to complete the dispute resolution process in accordance with Article 8 of this Contract.

9.4 Termination for Cause. In the event of default by the CM@Risk, the City may terminate the Contract for cause.

9.4.1 Notice. The City shall give fourteen (14) Days written notice to the CM@Risk of the City's intent to terminate the Contract and provide the CM@Risk and all Sureties an opportunity to remedy the conditions constituting the default.

9.4.2 Default. It shall be considered a default if the CM@Risk does one or more of the following prior to acceptance of the Work, or otherwise commits a material breach as described by other provisions of this Contract and fails to correct the deficiency after having a reasonable opportunity to cure as set forth in Section 9.4.3:

9.4.2.1 Becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due or is otherwise financially unable to complete the Work.

9.4.2.2 Persistently fails to provide materials or workmanship meeting the requirements of the Contract Documents, and fails to correct the defective work as required by section 2.14.

9.4.2.3 Persistently disregards or violates provisions of the Contract Documents or City's reasonable instructions.

9.4.2.4 Persistently fails to prosecute the Work according to the approved progress schedule without excusable delays.

9.4.2.5 Abandons the Project by persistently failing to report to the Site and diligently prosecute the Work.

9.4.2.6 Fails to notify the City's Representative upon discovery of Hazardous Materials or items of Native American, Archaeological, or Paleontological interest.

9.4.2.7 Persistently disregards laws or regulations of any public agency having jurisdiction.

9.4.2.8 Commits continuous or repeated serious violations of approved or legislated safety requirements.

9.4.2.9 Fails to maintain the insurance and bonds set forth in Article 10.

9.4.3 Failure to Cure. If the CM@Risk fails to remedy or fails to engage in reasonable actions to cure the conditions constituting default within fourteen (14) Days and any extensions that may be granted by the City which shall not be unreasonably withheld, the City may then terminate the Contract for cause by delivering written notice of termination to the CM@Risk.

9.4.4 City May Take Possession. In the event the Contract is terminated for cause, the City may take possession of the Project and may complete the Work by whatever method or means the City may select. The cost of completing the Work shall be deducted from the balance which would have been due the CM@Risk had the Contract not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the CM@Risk shall pay the excess amount reasonably incurred to the City. If such cost is less than the balance which would have been due, the CM@Risk shall not have claim to the difference.

9.4.5 Preservation of Rights. Where the CM@Risk's services have been terminated for cause by the City, the termination will not affect any rights or remedies of the City against the CM@Risk then existing or which may thereafter accrue. Any retention or payment of moneys due the CM@Risk by the City will not release the CM@Risk from liability.

9.4.6 Effect of Improper Termination. If the City improperly terminates this Contract for cause, the termination shall automatically be converted to a termination for convenience under section 9.2.

Article 10 - Insurance and Bonds

10.1 Insurance Requirements. The CM@Risk shall procure insurance as shown in Exhibit F to protect against claims for loss including injuries to persons or damage to

property, which may arise out of or in connection, with the performance of the Work hereunder by the CM@Risk, its agents, representatives, officers, employees, Suppliers or Subcontractors. CM@Risk shall maintain this insurance for the duration of this Contract and at all times thereafter when the CM@Risk is correcting, removing, or replacing Work in accordance with this Contract.

10.1.1 Liabilities. CM@Risk's liabilities, including but not limited to CM@Risk's indemnity obligations, under this Contract shall not be deemed limited in any way to the insurance coverage required herein.

10.1.2 Cost of Insurance. Payment for insurance shall be included in the GMP, and except as specifically agreed to by the City in writing, CM@Risk shall not be entitled to any additional payment nor shall the City be entitled to any credit.

10.1.3 Proof of Insurance. CM@Risk shall not begin any Work under this Contract until it has provided, and the City has approved, all required insurance certificates and endorsements.

10.1.4 Notice of Cancellation. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Contract and CM@Risk's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated as a material breach of contract.

10.2 Bonds. The CM@Risk shall furnish performance and payment bonds on forms provided by the City, each in the amount of the GMP less the amount of the Owner's Contingency.

10.2.1 Performance Bond. A performance bond to guarantee faithful performance of the Contract and associated Work, within the time prescribed, and in a manner satisfactory to the City.

10.2.2 Payment Bond. A payment bond to satisfy claims of material suppliers and of mechanics and laborers employed on the Work. The payment bond shall be maintained by the CM@Risk in full force and effect until the Work is accepted by the City and until all claims for materials and labor are paid, and shall otherwise comply with all applicable laws.

10.2.3 Licensed Surety. All bonds shall be in the form prescribed by the Contract Documents and by such sureties which are admitted insurers in the State of California and are subject to regulation by the Department of Insurance, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly

licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required.

10.2.4 Bankrupt or Insolvent Surety. If the surety on any bond furnished by the CM@Risk is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CM@Risk shall within seven (7) days thereafter substitute another bond and surety meeting the requirements of this section.

Article 11 - Indemnification and Limitation of Liability

11.1 General Indemnity. CM@Risk agrees to defend, indemnify, protect and hold City, its officers and employees, harmless from and against all claims or judgments asserted, or liability established for damages or injuries to any person or tangible property other than to the Work itself and/or the materials or equipment incorporated therein including to CM@Risk's employees, agents or officers, arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the CM@Risk, its agents, officers and employees. The obligation to indemnify shall be effective even if the City, its officers or employees established passive negligence contributes to the loss or claim. The CM@Risk's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active or sole negligence, or sole willful misconduct of the City, its agents, officers or employees.

11.2 Indemnity for Design Services. With respect to any design/build services provided by or through the CM@Risk under this Contract, except as otherwise provided by Civil Code section 2782.8, CM@Risk shall indemnify and hold harmless the City, its officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the CM@Risk, its design professionals, officers or employees.

11.3 Limitation of Liability. Under no theory of recovery, whether based in contract, tort, warranty or otherwise will either the City or the CM@Risk be liable to one another for any indirect, incidental or consequential damages arising out of or relating to this Project, liquidated under section 4.4, or compensable under section 9.2 upon the City's termination for convenience.

11.4 Survival. The indemnity provisions in this Article shall survive termination of this Contract and continue so long as a viable claim exists.

Article 12 – General Provisions

12.1 Contract Interpretation. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the GMP. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.

12.1.1 Order of Precedence. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

12.1.1.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.

12.1.1.2 Specifications take precedence over Plans.

12.1.1.3 In the event of any inconsistency, conflict, or ambiguity between the Contract Documents specifications, shop drawings, or other documents, the most restrictive or costly interpretations shall apply unless another interpretation is accepted by the City in writing.

12.1.2 Headings. The headings used in this Contract, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.1.3 Integration Clause. The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.2 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.3 Time is of the Essence. City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.4 Mutual Obligations. City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.4.1 Cooperation And Further Documentation. The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

12.4.2 Employees. Neither the City nor the CM@Risk may solicit or employ any of the other's employees assigned to provide services in connection with this Project for the duration of the Project and then for a period of one year thereafter.

12.5 Assignment. Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Contract or part of the Work or the

obligations required by the Contract Documents.

12.6 Successors-In-Interest. This Contract and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties signatory to this Contract shall be vested and binding on their successors-in-interest.

12.7 Third Party Beneficiaries. Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other person.

12.8 Governing Law. The Contract and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court of San Diego County, California, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction of such Court.

12.9 Severability. If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Contract without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Contract.

12.10 Compliance With Laws. CM@Risk shall perform all Work in accordance with all applicable federal, state and local laws and regulations pertaining to the Work, and shall ensure that all Subcontractors and Suppliers also comply.

12.10.1 Project Design. It is not the CM@Risk's responsibility to ascertain that the design of the Project is in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Project design are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

12.11 Independent Contractor. The CM@Risk is and shall be an independent contractor. Any provisions in the Contract that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

12.12 No Waivers. The failure of either party to enforce any of the provisions of the Contract or to require performance of the other party of any of the provisions hereof

shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either party to thereafter enforce each and every provision of this Contract.

12.13 Limitation on Powers. Nothing in this Contract shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

12.14 Conflict of Interest. The CM@Risk shall establish and make known to its employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel shall not accept gratuities or any other favors from potential Subcontractors or Suppliers.

12.14.1 Applicable Laws. The Contractor shall be subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code §§1090, et. seq., and 81000, et. seq., and the City Ethics Ordinance, codified in the City Municipal Code at §§27.3501 to 27.3595.

12.14.2 Statement of Economic Interests. If, in performing the Services and/or Work set forth in this Contract, the CM@Risk makes, or participates in, a "governmental decision" in accordance with title 2, §18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in the applicable department's conflict of interest code, the CM@Risk shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CM@Risk's relevant financial interests.

12.14.2.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The CM@Risk shall file a Form 700 (Assuming Office Statement) within 30 days of the City's written determination that the CM@Risk shall be subject to a conflict of interest code. The CM@Risk shall file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the CM@Risk was subject to a conflict of interest code.

12.14.2.2 If the City requires the CM@Risk to file a statement of economic interests as a result of the Services and/or Work performed, the CM@Risk shall be considered a "City Official" subject to the provisions of the City Ethics Ordinance, including the prohibition against lobbying the City for one year following the expiration or termination of this contract.

12.14.3 Affiliations. The CM@Risk shall not recommend or specify any product, supplier, or contractor with whom the CM@Risk has a direct or indirect financial or organizational interest or relationship that would violate conflict of

interest laws, regulations, or policies. This section shall not prohibit CM@Risk from utilizing its in-house brokerage staff to secure all insurance required by the Contract Documents. Additionally, this section shall not prohibit the CM@Risk from utilizing Turner Logistics to procure certain equipment and materials for use within the project as well as its Facilities Management Group ("FMG") to procure paperless project delivery methods and enhanced commissioning services as required by the LEED matrix.

12.14.4 Violations. If the Contractor violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Contract for cause. Further, the violation subjects the Contractor to liability to the City for all non-consequential damages sustained as a result of the violation.

12.15 Notice. Unless otherwise provided, any notice, request, instruction or other document to be given under this Contract by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

Ron Rudolf, Director of Operations
Turner Construction Company
9330 Scranton Road, Suite 150
San Diego, CA 92121
Phone: 858.320.4040
Fax: 858.558.4408
rrdolph@tcco.com

to City:

Afshin Oskoui, City Engineer
City of San Diego
600 B Street, 8th floor
San Diego, CA 92101
Phone: 619.533.5100
Fax:
aoskoui@sandiego.gov

With a Copy to:

City Attorney
San Diego City Attorney's Office
1200 3rd Avenue, Suite 1600
San Diego, CA 92101

Phone: 619.533.5800
Fax: 619.533.5856
cityattorney@sandiego.gov

12.15.1 Change of Address. Either party may change the address where notice should be sent by notifying the other party in writing.

12.15.2 Effect of Rejection. Any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.16 Effective Date. This Contract shall become effective on the date the last party fully executes the Contract.

12.17 Product Endorsement. Any advertisements referring to the City of San Diego as a user of a product or service requires prior written approval of the City pursuant to City Administrative Regulation 95.65.

12.18 Incorporation of Exhibits and Recitals. All exhibits referenced in this Contract and all recitals are incorporated herein by reference.

12.19 Counterparts. This Contract may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

(remainder of page intentionally blank)

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No. R-_____ authorizing such execution, and by the CM@Risk through its duly authorized officer.

TURNER CONSTRUCTION COMPANY

CITY OF SAN DIEGO

By:_____

By:_____

Name:_____

Name:_____

Date:_____

Date:_____

I HEREBY APPROVE the form and
legality of the forgoing agreement this
_____ day of _____, 2010.

JAN I. GOLDSMITH, City Attorney

By:_____
Deputy City Attorney

EXHIBIT A
PROJECT DESCRIPTION

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT B

APPROVED GMP PROPOSAL

(To BE PROVIDED IN FINAL DRAFT)

EXHIBIT C

TECHNICAL SPECIFICATIONS

(To BE PROVIDED IN FINAL DRAFT)

EXHIBIT D

CONSTRUCTION DRAWINGS

(To BE PROVIDED IN FINAL DRAFT)

Exhibit "E"
WATER POLLUTION CONTROL

[NOTE TO SPECIFIER – PROJECT MANAGER IS TO SELECT ONE (1) OF THE FOUR (4) VERSIONS OF SECTION 1.0. (SWPPP IN SPECIFICATIONS; TIER I SWPPP IN SPECIFICATIONS; TIER II SWPPP IN SPECIFICATIONS; OR WATER POLLUTION CONTROL PLAN (WPCP).]

SWPPP INCLUDED IN SPECIFICATIONS (Nov 05)

1.0 WATER POLLUTION CONTROL

The CONTRACTOR shall comply with all applicable standards, rules regulations, orders and requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, the San Diego Municipal Code and all applicable federal, state and City standards, rules, regulations, orders and requirements. The following is a list of definitions used in this section:

Clean Water Act (CWA): The Federal Water Pollution Control Act enacted in 1972 by Public Law 92-500 and amended by the Water Quality Act of 1987. The Clean Water Act prohibits the discharge of pollutants to Waters of the United States unless said discharge is in accordance with an NPDES permit. The 1987 amendments include guidelines for regulating municipal, industrial, and construction storm water discharges under the NPDES program.

National Pollutant Discharge Elimination System (NPDES): The Environmental Protection Agency's (EPA) program to control the discharge of pollutants to waters of the United States. NPDES is a part of the federal CWA, which requires point and non-point source discharges to obtain permits. These permits are referred to as NPDES permits.

Best Management Practice (BMP): (1) A method that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff and construction activities, (2) any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution.

Maximum Extent Practicable (MEP): The technology-based standard established by Congress in the Clean Water Act 402(p)(3)(B)(iii) that municipal discharges of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMP's primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional lines of defense).

Storm Water Pollution Prevention Plan (SWPPP): A document required by the State General Construction Permit, No. CAS000002 and No. CAS0108758 (www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit). The SWPPP document includes site map(s), an identification of construction and the CONTRACTOR activities that could potentially cause pollutant discharges, a plan on the methods and a description of measures or practices to control these pollutants. As part of the SWPPP, a Sampling and Analysis Program must also be implemented throughout construction. A SWPPP is required for sites with one acre or more of impact.

Weather Triggered Action Plan (WTAP): A written plan that shall be deployed with standby BMP's as needed to protect the exposed portions of the site within 24 hours of prediction of a storm event (a predicted storm event is defined as a forecasted, 40% or greater chance of rain).

Qualified Contact Person (QCP): The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

1.1 SITE MANAGEMENT

The CONTRACTOR shall prepare the 100% SWPPP based on the SWPPP document prepared by the owner during the design phase 90% (attachment XX). The 100% SWPPP shall incorporate additional BMP's and a revised site map to show activity locations (e.g., staging area) and controls that could not be determined during the design stage. The 100% SWPPP shall also include a site specific Sampling and Analysis Program in accordance with the requirements set forth in the State General Construction Permit. The CONTRACTOR shall submit the draft 100% SWPPP to the OWNER for review at the preconstruction meeting. The CONTRACTOR shall revise the SWPPP to the satisfaction of the OWNER, file one copy of the completed SWPPP with OWNER, and maintain the SWPPP at the construction site. The CONTRACTOR shall implement and update the SWPPP when necessary to match site conditions, monitor the construction site, and maintain BMP's in effective working condition. The project is required to have a Waste Dischargers Identification number (WDID #) prior to start on any construction activities.

The CONTRACTOR shall do the following:

- A. Designate a QCP that shall be responsible for the implementation, maintenance and improvement of the BMP's and SWPPP. The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

The QCP shall be responsible for monitoring the weather and implementation of any emergency plans that shall be activated when there is a 40% or greater chance of rain. The weather shall be monitored with the National Weather Service at <http://www.nws.noaa.gov> on a 5-day forecast plan.

The QCP shall be responsible for overseeing any site grading and construction operations, and for evaluating the effectiveness of the BMP's. The QCP shall ensure the modification of the BMP's as necessary to keep the site in compliance and to ensure adequate, routine maintenance of the BMP's.

- B. Educate all SUBCONTRACTORS and employees about storm water pollution prevention measures required during construction activities to prevent the impact of construction discharges to the storm water conveyance system. Education requirements shall be in accordance with State General Construction Permit, No. CAS000002 and No. CAS0108758. The CONTRACTOR shall ensure that all personnel are trained in basic storm water construction management. A log of the trained staff and the educational materials shall be kept in the SWPPP file and available upon request by the Resident Engineer.
- C. Protect all new and existing storm water conveyance systems from sedimentation, concrete rinse, or other construction related debris and discharges with the appropriate BMP's that are acceptable to the Resident Engineer and as indicated in the SWPPP.
- D. Indicate in the SWPPP the locations of BMP's (ie, concrete wash out, vehicle maintenance, staging and storage area protection, etc.) to be implemented. The CONTRACTOR shall ensure that these areas will be utilized properly and maintained regularly.
- E. Ensure that all waste and debris generated during the period of construction is contained within the storage/staging area. No dust, oil, or contaminated run-off shall be allowed out of the staging/storage area.

Perimeter and run-off control measures shall be installed around the staging/storage area. The entrance to the construction staging/storage area shall have stabilized gravel entrances/roadways, metal pans to loosen dirt from tires, or the like, to reduce tracking and create a sediment barrier between the storage/staging area and the roadway.

- F. Inspect and document monthly at a minimum or as directed by the Resident Engineer all BMP's, during the **dry season, May 1 through September 30**. Inspect and document weekly, at a minimum or as directed by the Resident Engineer all BMP's, during the **rainy season October 1 through April 30**. The CONTRACTOR shall include documentation in the SWPPP that BMP's were inspected at the intervals required and shall update and maintain this documentation for the duration of the project. The SWPPP and the updates shall be available to the Resident Engineer upon request.
- G. Conduct visual inspections daily and maintain all BMP's as needed and before, during and after every rain event and every 24 hours at a minimum during any prolonged rain event. The CONTRACTOR shall maintain and repair all BMP's as soon as possible as safety allows.
- H. If a non-storm water discharge leaves the project site, the CONTRACTOR shall immediately stop the activity and repair the damages. The CONTRACTOR shall immediately notify the Resident Engineer of the discharge. As soon as practical, any and all waste material, sediment and debris from each non storm water discharge shall be removed from the storm drain conveyance system and properly disposed of by the CONTRACTOR at no cost to the City.

All work, materials, labor, costs and time associated with the above requirements as described under this Section 1.1 shall be included in the project bid items when no specific bid item is provided in the bid schedule.

(i) 1.2

PERFORMANCE STANDARDS

The CONTRACTOR shall be responsible for implementing all water pollution control measures based on performance standards. Performance standards shall include:

- A. Non-storm water discharges from the site shall not occur to the MEP. All storm water discharges shall be free of pollutants including sediment to the MEP.
- B. Erosion shall be controlled by acceptable BMP's. If rills and gullies appear they shall be repaired and additional BMP's installed to prevent a reoccurrence of erosion.
- C. An inactive site must be protected to prevent pollutant discharges. A site or portions of a site, shall be considered inactive when construction activities have ceased for a period of seven (7) or more consecutive calendar days.
- D. Good housekeeping BMP's shall be implemented and maintained at all times during construction. The CONTRACTOR is responsible for clean-up of debris, concrete waste, sweeping, and dust control. Construction debris and waste shall be contained and disposed of properly. Access locations shall be kept clean and swept daily or more often as needed to assure no sediment leaves the construction site. The surrounding public streets shall be kept clean and swept daily and as needed to keep sediment out of the storm drain conveyance system.

- E. The CONTRACTOR shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages, obligations, penalties, fines, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), and costs resulting from any violations, failure to implement, maintain, or follow Best Management Practices, and/or losses arising out of or resulting from discharge of storm water containing sediment or other pollutants from the Project to the waters of the City's Storm Water Conveyance System, State or United States in quantities or concentrations exceeding those which would have occurred in the pre-construction condition of the Project and/or the discharge of any other contaminants in storm water that cause or contribute to the exceedance of a water quality objective for the receiving water as established in the San Diego Municipal Storm Water Permit and Water Quality Control Plan for the San Diego Basin (9). The CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

The CONTRACTOR shall implement BMP's in accordance with the California Storm Water Quality Association (CASQA) handbooks (www.cabmphandbooks.org) and in accordance with the California General Permit for Construction Activities (www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit). It is the CONTRACTOR's responsibility on both active and inactive sites to implement BMP's for all potential pollutant discharges.

(ii)

(iii) 1.2.1 DRY SEASON REQUIREMENTS (MAY 1 THROUGH SEPTEMBER 30)

- A. Perimeter protection BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- B. Sediment control BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- C. Sediment tracking control BMP's shall be installed and maintained at site entrances and exits to comply with the performance standards listed in section 1.2.
- D. Standby BMP materials necessary to protect the site against erosion, to prevent sediment discharge, and to prevent non storm water discharges shall be stored on site and readily accessible.
- E. The CONTRACTOR shall have an approved WTAP and have the ability to install standby BMP's to protect the site to the MEP within 24 hours of prediction of a storm event defined as a forecasted, 40% or greater chance of rain. On request, the CONTRACTOR shall provide proof of this capability that is acceptable to the RE.
- F. The amount of exposed soil allowed at one time shall not exceed that which can be adequately protected by deploying standby erosion control and sediment control BMP's prior to a predicted storm event.

(iv) 1.2.2 RAINY SEASON REQUIREMENTS (OCTOBER 1 THROUGH APRIL 30)

In addition to the requirements listed under the Dry Season Requirements, the following shall be required during the rainy season:

- A. Erosion control BMP's shall be adequate to the MEP to provide protection for storm events, during the rainy season.
- B. Perimeter protection and sediment control BMP's shall be adequate and to the MEP upgraded as necessary to provide sufficient protection for storms likely to occur during the rainy season.
- C. Physical or vegetation erosion control BMP's shall be installed and established for all completed construction areas prior to the start of the rainy season, and shall comply with the performance standards listed in section 1.2. These BMP's shall be maintained throughout the rainy season. If a BMP fails, it shall be repaired and improved, or replaced with an acceptable alternate as soon as safety allows.
- D. A disturbed area that is not being actively graded or excavated for seven (7) or more consecutive calendar days must be fully protected from erosion. The weather triggered action plan shall apply to inactive areas.

(v)

(vi) 1.3 CONSTRUCTION BMP's

It is the responsibility of the CONTRACTOR to select, install and maintain appropriate BMP's in accordance with these specifications. It is the CONTRACTOR's responsibility to ensure that the BMP's are operational and working properly. BMP's shall be installed in accordance with California Storm Water BMP handbooks (www.cabmphandbooks.org) and in accordance with the California General Permit for Construction Activities (http://www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit).

All BMP measures shall be identified in the SWPPP. A cost breakdown for the lump sum BMP items shall be provided before the notice to proceed is issued. The CONTRACTOR shall submit deviations or modifications to Resident Engineer.

(vii)

(viii) 1.3.1 EROSION CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining erosion control BMP's for all construction activities for the duration of the project. Erosion control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with erosion control BMP's shall be included in the lump sum price for erosion control for the project bid schedule.

1.3.2 SEDIMENT CONTROL

Adequate sediment control is required for all construction activities that may generate pollutants. The CONTRACTOR shall be responsible for selecting and maintaining sediment control BMP's for the duration of the project. Sediment control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with sediment control BMP's shall be included in the lump sum price for sediment control in the project bid schedule.

(ix)

(x) 1.3.3 STORM DRAIN INLET PROTECTION

The CONTRACTOR shall install and maintain Storm Drain inlet protection throughout construction and remove when project is completed and there is no longer a potential to discharge pollutants.

The CONTRACTOR shall be responsible for preventing any flooding associated with storm drain inlet protection. The area around the inlet shall allow water to pond without flooding the traveled way, structures and private property. Any BMP's temporarily removed by the Contractor to alleviate flooding shall be replaced or modified immediately as safety allows.

The storm drain inlet sediment control measures shall not impede the safe flow of traffic. The storm drain inlet sediment control measures shall be of sufficient weight so as not to shift out of place, or shall be secured in place against movement.

Inlet sediment control measures shall be maintained daily or more often as needed. Maintaining inlet sediment control measures shall include but not be limited to replacing damaged BMP's, removing and disposing of accumulated sediment, trash & debris. Waste materials shall be removed and disposed in accordance with the Greenbook (Standard Specification for Public Works Construction (SSPWC)).

Storm drain inlet protection will be measured and paid per number of inlets protected as listed in the unit bid price.

(xi) 1.3.4 NON-STORM WATER AND MATERIALS MANAGEMENT BMP's

The SWPPP shall include pollution control measures and associated locations for equipment maintenance, fueling, concrete washouts, cleaning and storage.

The CONTRACTOR shall avoid placing stock piles in any drainage path. The Resident Engineer may approve temporary stockpiling in a drainage path provided that measures are taken to allow unimpeded drainage, and sediment transport is prevented. Regardless of the location of stockpiled materials, containment measures are to be employed to control dust and sediment movement arising from wind, rain, and/or runoff. Controlling measures include but are not limited to covering the stockpiled material and the installation of protection around the perimeter of the stockpiled material during rain events and winds.

The lump sum price for Non-Stormwater and Materials Management BMP's shall cover all pollution control measures for equipment maintenance, fueling, cleaning, materials management and storage.

(xii) 1.3.5 STREET SWEEPING

The CONTRACTOR shall sweep the streets impacted by construction activities daily, and as often as needed, with a motor sweeper in accordance with section 7-8.1 of the Greenbook (Standard Specification for Public Works Construction (SSPWC)). Blowers shall not be used on site. The lump sum price for street sweeping shall cover all street sweeping, equipment, labor, and related activities.

1.3.6 WEATHER TRIGGERED ACTION PLAN

The CONTRACTOR shall prepare a written Weather Triggered Action Plan (WTAP) prior to the start of construction. The CONTRACTOR shall implement the WTAP within 24 hours of a predicted storm event (a predicted storm event is defined as a forecasted 40% or greater chance of rain). Rain forecasts can be found at www.nws.noaa.gov. The WTAP shall identify the staffing responsible for implementing, monitoring and maintaining the BMP's prior to and during the storm event, and shall identify on site availability of BMP's that will be installed on the exposed portions of the site to minimize erosion and sediment discharges, and prevent non-storm

water discharges from leaving the site to the MEP. The WTAP shall be filed in the SWPPP, WPCP, TIER I, or TIER II document and updated as site conditions change

1.4 INLET MARKERS

The CONTRACTOR shall mark every storm drain inlet within the projects boundaries with adhesive decal-discs or an imbedded concrete stamp. The CONTRACTOR shall use decal-discs on existing inlets and concrete stamps on new inlets. The concrete stamp is available from the Resident Engineer with five days advance notice. On curb inlets the concrete stamp or decal discs shall be placed on the top of curb at the inlet roof. On catch basins, the concrete stamp shall be imprinted next to the inlet grate. Any and all costs associated with this work shall be included in the storm drain marker unit bid price.

TIER I SWPPP INCLUDED IN SPECIFICATIONS (Nov 05)

1.0 WATER POLLUTION CONTROL

The CONTRACTOR shall comply with all applicable standards, rules regulations, orders and requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, the San Diego Municipal Code and all applicable federal, state and City standards, rules, regulations, orders and requirements. The following is a list of definitions used in this section:

Clean Water Act (CWA): The Federal Water Pollution Control Act enacted in 1972 by Public Law 92-500 and amended by the Water Quality Act of 1987. The Clean Water Act prohibits the discharge of pollutants to Waters of the United States unless said discharge is in accordance with an NPDES permit. The 1987 amendments include guidelines for regulating municipal, industrial, and construction storm water discharges under the NPDES program.

National Pollutant Discharge Elimination System (NPDES): The Environmental Protection Agency's (EPA) program to control the discharge of pollutants to waters of the United States. NPDES is a part of the federal CWA, which requires point and non-point source discharges to obtain permits. These permits are referred to as NPDES permits.

Best Management Practice (BMP): (1) A method that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff and construction activities, (2) any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution.

Maximum Extent Practicable (MEP): The technology-based standard established by Congress in the Clean Water Act 402(p)(3)(B)(iii) that municipal discharges of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMP's primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional lines of defense).

Small Linear Underground/Overhead Construction Project Permit (Small LUP): The Waster Discharge Requirements for Discharges of Storm Water Runoff Associated with Small Linear Underground/Overhead Construction Projects, General Permit No CAS00005 that regulates storm water discharges from Small LUP and includes, but are not limited to, any conveyance, pipe, or pipeline for the transportation an any gaseous, liquid, liquescent or slurry substance and/or transmission of electrical energy and associated ancillary facilities. The Small LUP regulates construction activities associated with these projects.

Tier I Storm Water Pollution Prevention Plan (Tier I SWPPP): A document required by the State General Construction Permit for storm water discharges associated with construction activity from small linear underground/overhead projects (www.waterboards.ca.gov/stormwtr/linear_const.html). The document includes site map(s), an identification of construction and CONTRACTOR activities that could potentially cause pollutant discharges in the storm water, a plan on the methods and a description of measures or practices to control these pollutants. A TIER I SWPPP is required for linear sites with between one and five acres of impact, where greater than 70% of construction activity is within paved areas.

Linear Construction Activity Notification (LCAN): A Notification form to be filed with the Regional Water Quality Control Board (RWQCB) which details SLUP project information including when a SLUP project will be constructed. This form should be filed prior to construction.

Linear Construction Termination Notification (LCTN): A Notification form to be filed with RWQCB which details that the construction for SLUP project (previously notified with a LCAN) will be or has been terminated.

Weather Triggered Action Plan (WTAP): A written plan that shall be deployed with standby BMP's as needed to protect the exposed portions of the site within 24 hours of prediction of a storm event (a predicted storm event is defined as a forecasted, 40% or greater chance of rain).

Qualified Contact Person (QCP): The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

1.1 SITE MANAGEMENT

The CONTRACTOR shall prepare the Tier I SWPPP based on the Tier I SWPPP template available at www.waterboards.ca.gov/stormwtr/linear_const.html. The Tier I SWPPP shall also include a site specific Sampling and Analysis Program in accordance with the requirements set forth in the Small LUP Permit. The CONTRACTOR shall submit the Tier I SWPPP to the OWNER for review at the preconstruction meeting. The CONTRACTOR shall revise the Tier I SWPPP to the satisfaction of the OWNER, file one copy of the completed Tier I SWPPP with the OWNER, and maintain the Tier I SWPPP at the construction site. The CONTRACTOR shall implement and update the Tier I SWPPP when necessary to match site conditions, monitor the construction site, and maintain BMP's in effective working condition. The project is required to have filed a LCAN prior to start on any construction activities.

The CONTRACTOR shall do the following:

- A. Designate a QCP that shall be responsible for the implementation, maintenance and improvement of the BMP's and Tier I SWPPP. The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

The QCP shall be responsible for monitoring the weather and implementation of any emergency plans that shall be activated when there is a 40% or greater chance of rain. The weather shall be monitored with the National Weather Service at www.nws.noaa.gov on a 5-day forecast plan.

The QCP shall be responsible for overseeing any site grading and construction operations, and for evaluating the effectiveness of the BMP's. The QCP shall ensure the modification of the BMP's as necessary to keep the site in compliance and to ensure adequate, routine maintenance of the BMP's.

- B. Educate all SUBCONTRACTORS and employees about storm water pollution prevention measures required during construction activities to prevent the impact of construction discharges to the storm water conveyance system. Education requirements shall be in accordance with The Waste Discharge Requirements for Discharge of Urban Runoff from the Municipal Storm Sewer System, General Permit No. CAS000002 and No. CAS0108758. The CONTRACTOR shall ensure that all personnel are trained in basic storm water construction management. A log of the trained staff and the educational materials shall be kept in the Tier I SWPPP file and available upon request by the Resident Engineer.
- C. Protect all new and existing storm water conveyance systems from sedimentation, concrete rinse, or other construction related debris and discharges with the appropriate BMP's that are acceptable to the Resident Engineer and as indicated in the Tier I SWPPP.
- D. Indicate in the Tier I SWPPP the locations of BMP's (ie, concrete wash out, vehicle maintenance, staging and storage area protection, etc.) to be implemented. The CONTRACTOR shall ensure that these areas will be utilized properly and maintained regularly.
- E. Ensure that all waste and debris generated during the period of construction is contained within the storage/staging area. No dust, oil, or contaminated run-off shall be allowed out of the staging/storage area. Perimeter and run-off control measures shall be installed around the staging/storage area. The entrance to the construction staging/storage area shall have stabilized gravel entrances/roadways, metal pans to loosen dirt from tires, or the like, to reduce tracking and create a sediment barrier between the storage/staging area and the roadway.
- F. Inspect and document monthly at a minimum or as directed by the Resident Engineer, all BMP's during the **dry season, May 1 through September 30**. Inspect and document weekly, at a minimum or as directed by the RE, all BMP's during the **rainy season October 1 through April 30**. The CONTRACTOR shall include documentation in the SWPPP that BMP's were inspected at the intervals required and shall update and maintain this documentation for the duration of the project. The SWPPP and the updates shall be available to the Resident Engineer upon request.
- G. Conduct visual inspections daily and maintain all BMP's as needed and before, during and after every rain event and every 24 hours at a minimum during any prolonged rain event. The CONTRACTOR shall maintain and repair all BMP's as soon as possible as safety allows.
- H. Return the land areas disturbed during construction to the pre-construction, or equivalent protection, at the end of each workday to eliminate or minimize erosion and the possibility for discharge of sediment or other pollutants during a rain event.
- I. If a non-storm water discharge leaves the project site, the CONTRACTOR shall immediately stop the activity and repair the damages. The CONTRACTOR shall immediately notify the Resident Engineer of the discharge. As soon as practical, any and all waste material, sediment and debris from each non storm water discharge shall be removed from the storm drain conveyance system and properly disposed of by the CONTRACTOR at no cost to the City.

All work, materials, labor, costs and time associated with the above requirements as described under this Section 1.1 shall be included in the project bid items when no specific bid item is provided in the bid schedule.

(xiii) 1.2

PERFORMANCE STANDARDS

The CONTRACTOR shall be responsible for implementing all storm water pollution control measures based on performance standards. Performance standards shall include:

- A. Non-storm water discharges from the site shall not occur to the MEP. All storm water discharges shall be free of pollutants including sediment to the MEP.
- B. Erosion shall be controlled by acceptable BMP's. If rills and gullies appear they shall be repaired and additional BMP's installed to prevent a reoccurrence of erosion.
- C. An inactive site must be protected to prevent pollutant discharges. A site or portions of a site, shall be considered inactive when construction activities have ceased for a period of seven (7) or more consecutive calendar days.
- D. Good housekeeping BMP's shall be implemented and maintained at all times during construction. The CONTRACTOR is responsible for the clean-up of debris, concrete waste, sweeping, and dust control. Construction debris and waste shall be contained and disposed of properly. Access locations shall be kept clean and swept daily or more often as needed to assure no sediment leaves the construction site. The surrounding public streets shall be kept clean and swept daily and as needed to keep sediment out of the storm drain conveyance system.
- E. The CONTRACTOR shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages, obligations, penalties, fines, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), and costs resulting from any violations, failure to implement, maintain, or follow Best Management Practices, and/or losses arising out of or resulting from discharge of storm water containing sediment or other pollutants from the Project to the waters of the City's Storm Water Conveyance System, State or United States in quantities or concentrations exceeding those which would have occurred in the pre-construction condition of the Project and/or the discharge of any other contaminants in storm water that cause or contribute to the exceedance of a water quality objective for the receiving water as established in the San Diego Municipal Storm Water Permit and Water Quality Control Plan for the San Diego Basin (9). The CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

The CONTRACTOR shall implement BMP's in accordance with the California Storm Water Quality Association (CASQA) handbooks (www.cabmphandbooks.org) and in accordance with the Small Linear Utility Permit for Construction Activities (www.swrcb.ca.gov/stormwtr/linear_const.html#lup). It is the CONTRACTOR's responsibility on both active and inactive sites to implement BMP's for all potential pollutant discharges.

(xiv)

(xv) 1.2.1 DRY SEASON REQUIREMENTS (MAY 1 THROUGH SEPTEMBER 30)

- A. Perimeter protection BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.

- B. Sediment control BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- C. Sediment tracking control BMP's shall be installed and maintained at site entrances and exits to comply with the performance standards listed in section 1.2.
- D. Standby BMP materials necessary to protect the site against erosion, to prevent sediment discharge, and to prevent non-storm water discharges shall be stored on site and readily accessible.
- E. The CONTRACTOR shall have an approved WTAP and have the ability to install standby BMP's to protect the site to the MEP within 24 hours of prediction of a storm event defined as a forecasted 40% or greater chance of rain. The CONTRACTOR shall provide proof of this capability that is acceptable to the RE upon request.
- F. The amount of exposed soil allowed at one time shall not exceed that which can be adequately protected by deploying standby erosion control and sediment control BMP's prior to a predicted storm event.

(xvi)

(xvii) 1.2.2 RAINY SEASON REQUIREMENTS (OCTOBER 1 THROUGH APRIL 30)

In addition to the requirements listed under the Dry Season Requirements, the following shall be required during the rainy season:

- A. Erosion control BMP's shall be adequate to the MEP to provide protection for storm events, during the rainy season.
- B. Perimeter protection and sediment control BMP's shall be adequate to the MEP upgraded as necessary to provide sufficient protection for storms likely to occur during the rainy season.
- C. Physical or vegetation erosion control BMP's shall be installed and established for all completed construction areas prior to the start of the rainy season, and shall comply with the performance standards listed in section 1.2. These BMP's shall be maintained throughout the rainy season. If a BMP fails, it shall be repaired and improved, or replaced with an acceptable alternate as soon as safety allows.
- D. A disturbed area that is not being actively graded or excavated for seven (7) or more consecutive calendar days must be fully protected from erosion. The weather triggered action plan shall apply to inactive areas.

1.3 CONSTRUCTION BMP'S

It is the responsibility of the CONTRACTOR to select, install and maintain appropriate BMP's in accordance with these specifications. It is the CONTRACTOR's responsibility to ensure that the BMP's are operational and working properly. BMP's shall be installed in accordance with California Storm Water BMP handbooks (www.cabmphandbooks.org) and in accordance with the State General Permit for storm water discharges associated with construction activity from small linear underground/overhead projects (www.waterboards.ca.gov/stormwtr/linear_const.html).

All BMP measures shall be identified in the Tier I SWPPP. A cost breakdown for the lump sum BMP items shall be provided before the notice to proceed is issued. The CONTRACTOR shall submit deviations or modifications to

Resident Engineer.

(xviii) 1.3.1 EROSION CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining erosion control BMP's for all construction activities for the duration of the project. Erosion control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with erosion control BMP's shall be included in the lump sum price for erosion control for the project bid schedule.

1.3.2 SEDIMENT CONTROL

Adequate sediment control is required for all construction activities that may generate pollutants. The CONTRACTOR shall be responsible for selecting and maintaining sediment control BMP's for the duration of the project. Sediment control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with sediment control BMP's shall be included in the lump sum price for sediment control in the project bid schedule.

(xix)

(xx) 1.3.3 STORM DRAIN INLET PROTECTION

The CONTRACTOR shall install and maintain Storm Drain Inlet Protection throughout construction and remove when the project is completed and there is no longer a potential to discharge pollutants.

The CONTRACTOR shall be responsible for preventing any flooding associated with storm drain inlet protection. The area around the inlet shall allow water to pond without flooding the traveled way, structures or private property. Any BMP's temporarily removed by the Contractor to alleviate flooding shall be replaced or modified immediately as safety allows.

The storm drain inlet sediment control measures shall not impede the safe flow of traffic. The storm drain inlet sediment control measures shall be of sufficient weight so as not to shift out of place, or shall be secured in place against movement.

Inlet sediment control measures shall be maintained daily or more often as needed. Maintaining inlet sediment control measures shall include but not be limited to replacing damaged BMP's, removing and disposing of accumulated sediment, trash & debris. Waste materials shall be removed and disposed in accordance with the Greenbook (Standard Specification for Public Works Construction (SSPWC)).

Storm drain inlet protection will be measured and paid per number of inlets protected as listed in the unit bid price.

(xxi)

(xxii) 1.3.4 NON-STORM WATER AND MATERIALS MANAGEMENT BMP'S

The TIER I SWPPP shall include pollution control measures and associated locations for equipment maintenance, fueling, concrete washouts, cleaning and storage.

The CONTRACTOR shall avoid placing stock piles in any drainage path. The Resident Engineer may approve temporary stockpiling in a drainage path provided that measures are taken to allow unimpeded drainage, and sediment transport is prevented. Regardless of the location of stockpiled materials, containment measures are to be employed to control dust and sediment movement arising from wind, rain, and/or runoff. Controlling measures

include, but are not limited to, covering the stockpiled material and the installation of protection around the perimeter of the stockpiled material during rain events and winds.

The lump sum price for Non-Stormwater and Materials Management BMP's shall cover all pollution control measures for equipment maintenance, fueling, cleaning, materials management and storage.

(xxiii) 1.3.5 STREET SWEEPING

The CONTRACTOR shall sweep the streets impacted by construction activities daily, and as often as needed, with a motor sweeper in accordance with section 7-8.1 of the Greenbook (Standard Specification for Public Works Construction (SSPWC)). Blowers shall not be used on site. The lump sum price for street sweeping shall cover all street sweeping, equipment, labor, and related activities.

1.3.6 WEATHER TRIGGERED ACTION PLAN

The CONTRACTOR shall prepare a written Weather Triggered Action Plan (WTAP) prior to the start of construction. The CONTRACTOR shall implement the WTAP within 24 hours of a predicted storm event (a predicted storm event is defined as a forecasted 40% or greater chance of rain). Rain forecasts can be found at www.nws.noaa.gov. The WTAP shall identify the staffing responsible for implementing, monitoring and maintaining the BMP's prior to and during the storm event, and shall identify on site availability of BMP's that will be installed on the exposed portions of the site to minimize erosion and sediment discharges, and prevent non-storm water discharges from leaving the site to the MEP. The WTAP shall be filed in the SWPPP, WPCP, TIER I, or TIER II document and updated as site conditions change

The lump sum bid price for the WTAP shall include all work necessary to prepare the WTAP, and all costs associated with the effective implementation of the WTAP for the duration of the project.

1.4 INLET MARKERS

The CONTRACTOR shall mark every storm drain inlet within the project boundaries with adhesive decal-discs or an imbedded concrete stamp. The CONTRACTOR shall use decal-discs on existing inlets and concrete stamps on new inlets. The concrete stamp is available from the Resident Engineer with five days advance notice. On curb inlets the concrete stamp or decal discs shall be placed on the top of curb at the inlet roof. On catch basins the concrete stamp shall be imprinted next to the inlet grate. Any and all costs associated with this work shall be included in the storm drain marker unit bid price.

Tier II SWPPP IN SPECIFICATIONS (Nov 05)

1.0 WATER POLLUTION CONTROL

The CONTRACTOR shall comply with all applicable standards, rules regulations, orders and requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, the San Diego Municipal Code and all applicable federal, state and City standards, rules, regulations, orders and requirements. The following is a list of definitions used in this section:

Clean Water Act (CWA): The Federal Water Pollution Control Act enacted in 1972 by Public Law 92-500 and amended by the Water Quality Act of 1987. The Clean Water Act prohibits the discharge of pollutants to Waters of

the United States unless said discharge is in accordance with an NPDES permit. The 1987 amendments include guidelines for regulating municipal, industrial, and construction storm water discharges under the NPDES program.

National Pollutant Discharge Elimination System (NPDES): The Environmental Protection Agency's program to control the discharge of pollutants to waters of the United States. NPDES is a part of the federal CWA, which requires point and non-point source discharges to obtain permits. These permits are referred to as NPDES permits.

Best Management Practice (BMP): (1) A method that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff and construction activities, (2) any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution.

Maximum Extent Practicable (MEP): The technology-based standard established by Congress in the Clean Water Act 402(p)(3)(B)(iii) that municipal discharges of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMP's primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional lines of defense).

Small Linear Underground/Overhead Construction Project Permit (Small LUP): The Waster Discharge Requirements for Discharges of Storm Water Runoff Associated with Small Linear Underground/Overhead Construction Projects, General Permit No CAS00005, that regulates storm water discharges from Small LUP and includes, but are not limited to, any conveyance, pipe, or pipeline for the transportation an any gaseous, liquid, liquescent or slurry substance and/or transmission of electrical energy and associated ancillary facilities. The SLUP regulates construction activities associated with these projects.

Tier II Storm Water Pollution Prevention Plan (Tier II SWPPP): A document required by the State General Construction Permit for storm water discharges associated with construction activity from small linear underground/overhead projects (www.waterboards.ca.gov/stormwtr/linear_const.html). The document includes site map(s), an identification of construction and CONTRACTOR activities that could potentially cause pollutant discharges in the storm water, a plan on the methods and a description of measures or practices to control these pollutants. A TIER II SWPPP is required for linear sites with between one and five acres of impact, where greater than 30% of construction activity is within unpaved areas.

Weather Triggered Action Plan (WTAP): A written plan that shall be deployed with standby BMP's as needed to protect the exposed portions of the site within 24 hours of prediction of a storm event (a predicted storm event is defined as a forecasted, 40% or greater chance of rain).

Qualified Contact Person (QCP): The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

1.1 SITE MANAGEMENT

The CONTRACTOR shall prepare the 100% Tier II SWPPP based on the 90% Tier II SWPPP to be provided by the OWNER (attachment XX). The 100% Tier II SWPPP shall incorporate additional BMP's and a revised site map to show activity locations (e.g. staging area) and controls that could not be determined during the design stage. The Tier II SWPPP shall also include a site specific Sampling and Analysis Program in accordance with the requirements set forth in the Small LUP Permit. The CONTRACTOR shall submit the draft 100% Tier II SWPPP to the OWNER for review at the preconstruction meeting. The CONTRACTOR shall revise the Tier II SWPPP to the satisfaction of the OWNER, file one copy of the completed Tier II SWPPP with OWNER, and maintain the Tier

II SWPPP at the construction site. The CONTRACTOR shall implement and update the Tier II SWPPP when necessary to match site conditions, monitor the construction site, and maintain BMP's in effective working condition. The project is required to have a Waste Dischargers Identification number (WDID #) prior to start on any construction activities.

The CONTRACTOR shall do the following:

- A. Designate a QCP that shall be responsible for the implementation, maintenance and improvement of the BMP's and Tier II SWPPP. The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

The QCP shall be responsible for monitoring the weather and implementation of any emergency plans that shall be activated when there is a 40% or greater chance of rain. The weather shall be monitored with the National Weather Service at www.nws.noaa.gov on a 5-day forecast plan.

The QCP shall be responsible for overseeing any site grading and construction operations, and for evaluating the effectiveness of the BMP's. The QCP shall ensure the modification of the BMP's as necessary to keep the site in compliance and to ensure adequate, routine maintenance of the BMP's.

- B. Educate all SUBCONTRACTORS and employees about storm water pollution prevention measures required during construction activities to prevent the impact of construction discharges to the storm water conveyance system. Education requirements shall be in accordance with The Waste Discharge Requirements for Discharge of Urban Runoff from the Municipal Storm Sewer System, General Permit No. CAS000002 and No. CAS0108758. The CONTRACTOR shall ensure that all personnel are trained in basic storm water construction management. A log of the trained staff and the educational materials shall be kept in the Tier II SWPPP file and available upon request by the Resident Engineer.
- C. Protect all new and existing storm water conveyance systems from sedimentation, concrete rinse, or other construction related debris and discharges with the appropriate BMP's that are acceptable to the Resident Engineer and as indicated in the Tier II SWPPP.
- D. Indicate in the Tier II SWPPP the locations of BMP's (ie, concrete wash out, vehicle maintenance, staging and storage area protection, etc.) to be implemented. The CONTRACTOR shall ensure that these areas will be utilized properly and maintained regularly.
- E. The CONTRACTOR shall be responsible for ensuring that all waste and debris generated during the period of construction is contained within the storage/staging area. No dust, oil, or contaminated run-off shall be allowed out of the staging/storage area. Perimeter and run-off control measures shall be installed around the staging/storage area. The entrance to the construction staging/storage area shall have stabilized gravel entrances/roadways, metal pans to loosen dirt from tires, or the like, to reduce tracking and create a sediment barrier between the storage/staging area and the roadway.
- F. Inspect and document monthly at a minimum or as directed by the Resident Engineer, all BMP's during the **dry season, May 1 through September 30**. Inspect and document weekly, at a minimum or as directed by the Resident Engineer, all BMP's during the **rainy season October 1 through April 30**. The CONTRACTOR shall include documentation in the Tier II SWPPP that BMP's were inspected at the

intervals required and shall update and maintain this documentation for the duration of the project. The Tier II SWPPP and the updates shall be available to the Resident Engineer upon request.

- G. Conduct visual inspections daily and maintain all BMP's as needed and before, during and after every rain event and every 24 hours at a minimum during any prolonged rain event. The CONTRACTOR shall maintain and repair all BMP's as soon as possible, as safety allows.
- H. If a non-storm water discharge leaves the project site, the CONTRACTOR shall immediately stop the activity and repair the damages. The CONTRACTOR shall immediately notify the Resident Engineer of the discharge. As soon as practical, any and all waste material, sediment and debris from each non storm water discharge shall be removed from the storm drain conveyance system and properly disposed of by the CONTRACTOR at no cost to the City.

All work, materials, labor, costs and time associated with the above requirements as described under this Section 1.1 shall be included in the project bid items when no specific bid item is provided in the bid schedule.

(xxiv) 1.2

PERFORMANCE STANDARDS

The CONTRACTOR shall be responsible for implementing all water pollution control measures based on performance standards. Performance standards shall include:

- A. Non-storm water discharges from the site shall not occur to the MEP. All storm water discharges shall be free of pollutants including sediment to the MEP.
- B. Erosion shall be controlled by acceptable BMP's. If rills and gullies appear they shall be repaired and additional BMP's installed to prevent a reoccurrence of erosion.
- C. An inactive site must be protected to prevent pollutant discharges. A site or portions of a site, shall be considered inactive when construction activities have ceased for a period of seven (7) or more consecutive calendar days.
- D. Good housekeeping BMP's shall be implemented and maintained at all times during construction. The CONTRACTOR is responsible for all clean-up of debris, concrete waste, sweeping, and dust control. Construction debris and waste shall be contained and disposed of properly. Access locations shall be kept clean and swept daily or more often as needed to assure no sediment leaves the construction site. The surrounding public streets shall be kept clean and swept daily and as needed to keep sediment out of the storm drain conveyance system.
- E. The CONTRACTOR shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages, obligations, penalties, fines, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), and costs resulting from any violations, failure to implement, maintain, or follow Best Management Practices, and/or losses arising out of or resulting from discharge of storm water containing sediment or other pollutants from the Project to the waters of the City's Storm Water Conveyance System, State or United States in quantities or concentrations exceeding those which would have occurred in the pre-construction condition of the Project and/or the discharge of any other contaminants in storm water that cause or contribute to the exceedance of a water quality objective for the receiving water as established in the San Diego

Municipal Storm Water Permit and Water Quality Control Plan for the San Diego Basin (9). The CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

The CONTRACTOR shall implement BMP's in accordance with the California Storm Water Quality Association (CASQA) handbooks (www.cabmphandbooks.org) and in accordance with the Small Linear Utility Permit for Construction Activities (www.swrcb.ca.gov/stormwtr/linear_const.html#lup). It is the CONTRACTOR's responsibility on both active and inactive sites to implement BMP's for all potential pollutant discharges.

(xxv) 1.2.1 DRY SEASON REQUIREMENTS (MAY 1 THROUGH SEPTEMBER 30)

- A. Perimeter protection BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- B. Sediment control BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- C. Sediment tracking control BMP's shall be installed and maintained at site entrances and exits to comply with the performance standards listed in section 1.2.
- D. Standby BMP materials necessary to protect the site against erosion, to prevent sediment discharge, and to prevent non storm water discharges shall be stored on site and readily accessible.
- E. The CONTRACTOR shall have an approved WTAP and have the ability to install standby BMP's to protect the site to the MEP within 24 hours of prediction of a storm event defined as a forecasted, 40% or greater chance of rain. On request, the CONTRACTOR shall provide proof of this capability that is acceptable to the RE.
- F. The amount of exposed soil allowed at one time shall not exceed that which can be adequately protected by deploying standby erosion control and sediment control BMP's prior to a predicted storm event.

(xxvi) 1.2.2 RAINY SEASON REQUIREMENTS (OCTOBER 1 THROUGH APRIL 30)

In addition to the requirements listed under the Dry Season Requirements, the following shall be required during the rainy season:

- A. Erosion control BMP's shall be adequate to the MEP to provide protection for storm events, during the rainy season.
- B. Perimeter protection and sediment control BMP's shall be adequate and to the MEP upgraded as necessary to provide sufficient protection for storms likely to occur during the rainy season.
- C. Physical or vegetation erosion control BMP's shall be installed and established for all completed construction areas prior to the start of the rainy season, and shall to comply with the performance standards listed in section 1.2. These BMP's shall be maintained throughout the rainy season. If a BMP fails, it shall be repaired and improved, or replaced with an acceptable alternate as soon as safety allows it is safe to do so.

- D. A disturbed area that is not being actively graded or excavated for seven (7) or more consecutive calendar days must be fully protected from erosion. The weather triggered action plan shall apply to inactive areas.

(xxvii) 1.3 CONSTRUCTION BMP's

It is the responsibility of the CONTRACTOR to select, install and maintain appropriate BMP's in accordance with these specifications. It is the CONTRACTOR's responsibility to ensure that the BMP's are operational and working properly. BMP's shall be installed in accordance with California Storm Water BMP handbooks (www.cabmphandbooks.org) and in accordance with the State General Permit for storm water discharges associated with construction activity from small linear underground/overhead projects (http://www.waterboards.ca.gov/stormwtr/linear_const.html).

All BMP measures shall be identified in the Tier II SWPPP. A cost breakdown for the lump sum BMP items shall be provided before the notice to proceed is issued. The CONTRACTOR shall submit deviations or modifications to Resident Engineer.

(xxviii)

(xxix) 1.3.1 EROSION CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining erosion control BMP's for all construction activities for the duration of the project. Erosion control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with erosion control BMP's shall be included in the lump sum price for erosion control for the project bid schedule.

1.3.2 SEDIMENT CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining sediment control BMP's for the duration of the project. Adequate sediment control is required for all construction activities that may generate pollutants. Sediment control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with sediment control BMP's shall be included in the lump sum price for sediment control in the project bid schedule.

(xxx)

(xxxi) 1.3.3 STORM DRAIN INLET PROTECTION

The CONTRACTOR shall install and maintain Storm Drain Inlet Protection throughout construction and remove when project is completed and there is no longer a potential to discharge pollutants.

The CONTRACTOR shall be responsible for preventing any flooding associated with storm drain inlet protection. The area around the inlet shall allow water to pond without flooding the traveled way, structures and private property. Any BMP's temporarily removed by the Contractor to alleviate flooding shall be replaced or modified immediately as safety allows.

The storm drain inlet sediment control measures shall not impede the safe flow of traffic. The storm drain inlet sediment control measures shall be of sufficient weight so as not to shift out of place, or shall be secured in place against movement.

Inlet sediment control measures shall be maintained daily or more often as needed. Maintaining inlet sediment control measures shall include but not be limited to replacing damaged BMP's, removing and disposing of

accumulated sediment, trash & debris. Waste materials shall be removed and disposed in accordance with the Greenbook (Standard Specification for Public Works Construction (SSPWC)).

Storm drain inlet protection will be measured and paid per number of inlets protected as listed in the unit bid price.

(xxxii) 1.3.4 NON-STORM WATER AND MATERIALS MANAGEMENT BMP's

The Tier II SWPPP shall include pollution control measures and associated locations for equipment maintenance, fueling, concrete washouts, cleaning and storage.

The CONTRACTOR shall avoid placing stock piles in any drainage path. The Resident Engineer may approve temporary stockpiling in a drainage path provided that measures are taken to allow unimpeded drainage, and sediment transport is prevented. Regardless of the location of stockpiled materials, containment measures are to be employed to control dust and sediment movement arising from wind, rain, and/or runoff. Controlling measures include but are not limited to covering the stockpiled material and the installation of protection around the perimeter of the stockpiled material during rain events and winds.

The lump sum price for Non-Stormwater and Materials Management BMP's shall cover all pollution control measures for equipment maintenance, fueling, cleaning, materials management and storage.

(xxxiii) 1.3.5 STREET SWEEPING

The CONTRACTOR shall sweep the streets impacted by construction activities daily, and as often as needed, with a motor sweeper in accordance with section 7-8.1 of the Greenbook. Blowers shall not be used on site. The lump sum price for street sweeping shall cover all street sweeping, equipment, labor, and related activities.

1.3.6 WEATHER TRIGGERED ACTION PLAN

The CONTRACTOR shall prepare a written Weather Triggered Action Plan (WTAP) prior to the start of construction. The CONTRACTOR shall implement the WTAP within 24 hours of a predicted storm event (a predicted storm event is defined as a forecasted 40% or greater chance of rain). Rain forecasts can be found at www.nws.noaa.gov. The WTAP shall identify the staffing responsible for implementing, monitoring and maintaining the BMP's prior to and during the storm event, and shall identify on site availability of BMP's that will be installed on the exposed portions of the site to minimize erosion and sediment discharges, and prevent non-storm water discharges from leaving the site to the MEP. The WTAP shall be filed in the SWPPP, WPCP, TIER I, or TIER II document and updated as site conditions change.

The lump sum bid price for the WTAP shall include all work necessary to prepare the WTAP, and all costs associated with the effective implementation of the WTAP for the duration of the project.

1.4 INLET MARKERS

The CONTRACTOR shall mark every storm drain inlet within the project boundaries with adhesive decal-discs or an imbedded concrete stamp. The CONTRACTOR shall use decal-discs on existing inlets and concrete stamps on new inlets. The concrete stamp is available from the Resident Engineer with five days advance notice. On curb inlets the concrete stamp or decal discs shall be placed on the top of curb at the inlet roof. On catch basins, the

concrete stamp shall be imprinted next to the inlet grate. Any and all costs associated with this work shall be included in the storm drain marker unit bid price.

WPCP IN SPECIFICATIONS (Nov 05)

1.0 WATER POLLUTION CONTROL

The CONTRACTOR shall comply with all applicable standards, rules regulations, orders and requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, the San Diego Municipal Code and all applicable federal, state and City standards, rules, regulations, orders and requirements. The following is a list of definitions used in this section:

Best Management Practice (BMP): (1) A method that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff and construction activities (2) any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution.

Clean Water Act (CWA): The Federal Water Pollution Control Act enacted in 1972 by Public Law 92-500 and amended by the Water Quality Act of 1987. The Clean Water Act prohibits the discharge of pollutants to Waters of the United States unless said discharge is in accordance with an NPDES permit. The 1987 amendments include guidelines for regulating municipal, industrial, and construction storm water discharges under the NPDES program.

Maximum Extent Practicable (MEP): The technology-based standard established by Congress in the Clean Water Act 402(p)(3)(B)(iii) that municipal discharges of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMP's primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional lines of defense).

National Pollutant Discharge Elimination System (NPDES): Environmental Protection Agency's program to control the discharge of pollutants to waters of the United States. NPDES is a part of the federal CWA, which requires point and non-point source discharges to obtain permits. These permits are referred to as NPDES permits.

Qualified Contact Person (QCP): The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

Water Pollution Control Plan (WPCP): A plan required by the City Storm water Standards Manual that shall indicate BMP placement and methods to prevent storm water pollution and non-storm water discharges. The WPCP is required for sites with less than 1 acre of ground disturbance inclusive of any unpaved areas associated with the project.

Weather Triggered Action Plan (WTAP): A plan to deploy standby BMP's as needed to protect the exposed portions of the site within 24 hours of prediction of a storm event (a predicted storm event is defined as a forecasted, 40% chance of rain).

1.1 SITE MANAGEMENT

The Contractor shall prepare a WPCP as required for all projects under one acre in ground disturbance. The WPCP shall be submitted to the Resident Engineer at the Preconstruction Meeting. The WPCP shall follow the requirements as outlined in Appendix E of the City of San Diego Storm Water Standards Manual and must be submitted prior to the start of construction activities. The WPCP shall be kept at the construction site and made

available at all times. The CONTRACTOR shall implement and update the WPCP when necessary, monitor the construction site, and maintain BMP's in effective working condition.

The CONTRACTOR shall do the following:

- A. Designate a QCP that shall be responsible for the implementation, maintenance and improvement of the BMP's and WPCP. The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

The QCP shall be responsible for monitoring the weather and implementation of any emergency plans that shall be activated when there is a 40% or greater chance of rain. The weather shall be monitored with the National Weather Service at <http://www.nws.noaa.gov> on a 5-day forecast plan.

The QCP shall be responsible for overseeing any site grading and construction operations, and for evaluating the effectiveness of the BMP's. The QCP shall ensure the modification of the BMP's as necessary to keep the site in compliance and to ensure adequate, routine maintenance of the BMP's.

- B. Educate all SUBCONTRACTORS and employees about storm water pollution prevention measures required during construction activities to prevent the impact of construction discharges to the storm water conveyance system. Education requirements shall be in accordance with Section F.2.J of the San Diego Regional Water Quality Control Board (SDRWQCB) Order No. 2001-1, dated February 21, 2001. The CONTRACTOR shall ensure that all personnel are trained in basic storm water construction management. A log of the trained staff and the educational materials shall be kept in the WPCP file and available upon request by the Resident Engineer.
- C. Protect all new and existing storm water conveyance systems from sedimentation, concrete rinse, or other construction related debris and discharges with the appropriate BMP's that are acceptable to the Resident Engineer and as indicated in the WPCP.
- D. Indicate in the WPCP the locations of BMP's (ie, concrete wash out, vehicle maintenance, staging and storage area protection, etc.) to be implemented. The CONTRACTOR shall ensure that these areas will be utilized properly and maintained regularly.
- E. The CONTRACTOR shall be responsible for ensuring that all waste and debris generated during the period of construction is contained within the storage/staging area or properly disposed. No sediment, oil, or contaminated run-off shall be allowed out of the staging/storage area. Perimeter and run-off control measures shall be installed around the staging/storage area. The entrance to the construction staging/storage area shall have stabilized gravel entrances/roadways, metal pans to loosen dirt from tires, or the like, to reduce tracking and create a sediment barrier between the storage/staging area and the roadway.
- F. Inspect and document monthly at a minimum or as directed by the Resident Engineer, all BMP's during the **dry season, May 1 through September 30**. Inspect and document weekly, at a minimum or as directed by the Resident Engineer, all BMP's during the **rainy season October 1 through April 30**. The CONTRACTOR shall include documentation in the WPCP that BMP's were inspected at the intervals required and shall update and maintain this documentation for the duration of the project. The WPCP and the updates shall be available to the Resident Engineer upon request.

- G. Conduct visual inspections daily and maintain all BMP's as needed. Visual Inspections and maintenance of all BMP's shall be conducted before, during and after every rain event and every 24 hours (at a minimum) during any prolonged rain event. The CONTRACTOR shall maintain and repair all BMP's as soon as possible as safety allows.
- H. If a non-storm water discharge leaves the project site, the CONTRACTOR shall immediately stop the activity and repair the damages. The CONTRACTOR shall immediately notify the Resident Engineer of the discharge. As soon as practical, any and all waste material, sediment and debris from each non storm water discharge shall be removed from the storm drain conveyance system and properly disposed of by the CONTRACTOR at no cost to the City.

All work, materials, labor, costs and time associated with maintenance and upkeep of the Water Pollution Control Document shall be included in the lump sum bid item to maintain and update the Water Pollution Control Document for the project bid schedule. All work, materials, labor, costs and time associated with the above requirements as described under this Section 1.1 shall be included in the project bid items when no specific bid item is provided in the bid schedule.

(xxxiv) 1.2

PERFORMANCE STANDARDS

The CONTRACTOR shall be responsible for implementing all water pollution control measures based on performance standards. Performance standards shall include:

- A. Non-storm water discharges from the site shall not occur to the MEP. All storm water discharges shall be free of pollutants including sediment to the MEP.
- B. Erosion shall be controlled by acceptable BMP's to the MEP. If rills and gullies appear they shall be repaired and additional BMP's installed to prevent a reoccurrence of erosion.
- C. An inactive site must be protected to prevent pollutant discharges. A site or portions of a site, shall be considered inactive when construction activities have ceased for a period of seven (7) or more consecutive calendar days.
- D. Good housekeeping BMP's shall be implemented and maintained at all times during construction. The CONTRACTOR is responsible for clean-up of debris, concrete waste, sweeping, and dust control. Construction debris and waste shall be contained and disposed of properly. Access locations shall be kept clean and swept daily or more often as needed to assure no sediment leaves the construction site. The surrounding public streets shall be kept clean and swept daily and as needed to keep sediment out of the storm drain conveyance system.
- E. The CONTRACTOR shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages, obligations, penalties, fines, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), and costs resulting from any violations, failure to implement, maintain, or follow Best Management Practices, and/or losses arising out of or resulting from discharge of storm water containing sediment or other pollutants from the Project to the waters of the City's Storm Water Conveyance System, State or United States in quantities or concentrations exceeding those which would have occurred in the pre-construction condition of the Project and/or the discharge of any other contaminants in storm water that cause or contribute to the exceedance of a water quality objective for the receiving water as established in the San Diego

Municipal Storm Water Permit and Water Quality Control Plan for the San Diego Basin (9). The CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

The CONTRACTOR shall implement BMP's in accordance with the California Storm Water Quality Association (CASQA) handbooks (www.cabmphandbooks.org) and in accordance with the California General Permit for Construction Activities (www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit). It is the CONTRACTOR's responsibility on both active and inactive sites to implement BMP's for all potential pollutant discharges.

(xxxv)

(xxxvi) 1.2.1 DRY SEASON REQUIREMENTS (MAY 1 THROUGH SEPTEMBER 30)

- A. Perimeter protection BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- B. Sediment control BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- C. Sediment tracking control BMP's shall be installed and maintained at site entrances and exits to comply with the performance standards listed in section 1.2.
- D. Standby BMP materials necessary to protect the site against erosion, to prevent sediment discharge, and to prevent non storm water discharges shall be stored on site and readily accessible.
- E. The CONTRACTOR shall have an approved WTAP and have the ability to install standby BMP's to protect the site to the MEP within 24 hours of prediction of a storm event defined as a forecasted, 40% or greater chance of rain. On request, the CONTRACTOR shall provide proof of this capability that is acceptable to the RE.
- F. The amount of exposed soil allowed at one time shall not exceed that which can be adequately protected by deploying standby erosion control and sediment control BMP's prior to a predicted storm event.

(xxxvii)

(xxxviii) 1.2.2 RAINY SEASON REQUIREMENTS (OCTOBER 1 THROUGH APRIL 30)

In addition to the requirements listed under the Dry Season Requirements, the following shall be required during the rainy season:

- A. Erosion control BMP's shall be adequate to the MEP to provide protection for storm events, during the rainy season.
- B. Perimeter protection and sediment control BMP's shall be adequate and to the MEP upgraded as necessary to provide sufficient protection for storms likely to occur during the rainy season.
- C. Physical or vegetation erosion control BMP's shall be installed and established for all completed construction areas prior to the start of the rainy season, and shall comply with the performance standards listed in section 1.2. These BMP's shall be maintained throughout the rainy season. If a BMP fails, it shall be repaired and improved, or replaced with an acceptable alternate as soon as safety allows.

- D. A disturbed area that is not being actively graded or excavated for seven (7) or more consecutive calendar days must be fully protected from erosion. The weather triggered action plan shall apply to inactive areas.

(xxxix)

(xl) 1.3 CONSTRUCTION BMP's

It is the responsibility of the CONTRACTOR to select, install and maintain appropriate BMP's in accordance with these specifications. It is the CONTRACTOR's responsibility to ensure that the BMP's are operational and working properly. BMP's shall be installed in accordance with California Storm Water BMP handbooks (www.cabmphandbooks.org) and in accordance with the California General Permit for Construction Activities (www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit).

All BMP measures shall be identified in the WPCP. A cost breakdown for the lump sum BMP items shall be provided before the notice to proceed is issued. The CONTRACTOR shall submit deviations or modifications to Resident Engineer.

(xli) 1.3.1 EROSION CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining erosion control BMP's for all construction activities for the duration of the project. Erosion control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with erosion control BMP's shall be included in the lump sum price for erosion control for the project bid schedule.

1.3.2 SEDIMENT CONTROL

Adequate sediment control is required for all construction activities that may generate pollutants. The CONTRACTOR shall be responsible for selecting and maintaining sediment control BMP's for the duration of the project. Sediment control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with sediment control BMP's shall be included in the lump sum price for sediment control in the project bid schedule.

(xlii)

(xliii) 1.3.3 STORM DRAIN INLET PROTECTION

Storm drain inlet protection shall be installed and maintained throughout construction and removed when project is completed and there is no longer a potential to discharge pollutants.

The CONTRACTOR shall be responsible for preventing any flooding associated with storm drain inlet protection. The area around the inlet shall allow water to pond without flooding the traveled way, structures and private property. Any BMP's temporarily removed by the Contractor to alleviate flooding shall be replaced or modified immediately as safety allows.

The storm drain inlet sediment control measures shall not impede the safe flow of traffic. The storm drain inlet sediment control measures shall be of sufficient weight so as not to shift out of place, or shall be secured in place against movement.

Inlet sediment control measures shall be maintained daily or more often as needed. Maintaining inlet sediment control measures shall include but not be limited to replacing damaged BMP's, removing and disposing of

accumulated sediment, trash & debris. Waste materials shall be removed and disposed in accordance with the Greenbook (Standard Specification for Public Works Construction (SSPWC)).

Storm drain inlet protection will be measured and paid per number of inlets protected as listed in the unit bid price.

(xiv) 1.3.4 NON-STORM WATER AND MATERIALS MANAGEMENT BMP'S

The WPCP shall include pollution control measures and associated locations for equipment maintenance, fueling, concrete washouts, cleaning and storage.

The CONTRACTOR shall avoid placing stock piles in any drainage path. The Resident Engineer may approve temporary stockpiling in a drainage path provided that measures are taken to allow unimpeded drainage, and sediment transport is prevented. Regardless of the location of stockpiled materials, containment measures are to be employed to control dust and sediment movement arising from wind, rain, and/or runoff. Controlling measures include but are not limited to covering the stockpiled material and the installation of protection around the perimeter of the stockpiled material during rain events and winds.

The lump sum price for Non-Stormwater and Materials Management BMP's shall cover all pollution control measures for equipment maintenance, fueling, cleaning, materials management and storage.

(xiv) 1.3.5 STREET SWEEPING

The CONTRACTOR shall sweep the streets impacted by construction activities daily, and as often as needed, with a motor sweeper in accordance with section 7-8.1 of the Greenbook (Standard Specification for Public Works Construction (SSPWC)). Blowers shall not be used on site. The lump sum price for street sweeping shall cover all street sweeping, equipment, labor, and related activities.

1.3.6 WEATHER TRIGGERED ACTION PLAN

The CONTRACTOR shall prepare a written Weather Triggered Action Plan (WTAP) prior to the start of construction. The CONTRACTOR shall implement the WTAP within 24 hours of a predicted storm event (a predicted storm event is defined as a forecasted 40% or greater chance of rain). Rain forecasts can be found at www.nws.noaa.gov. The WTAP shall identify the staffing responsible for implementing, monitoring and maintaining the BMP's prior to and during the storm event, and shall identify on site availability of BMP's that will be installed on the exposed portions of the site to minimize erosion and sediment discharges, and prevent non-storm water discharges from leaving the site to the MEP. The WTAP shall be filed in the SWPPP, WPCP, TIER I, or TIER II document and updated as site conditions change.

The lump sum bid price for the WTAP shall include all work necessary to prepare the WTAP, and all costs associated with the effective implementation of the WTAP for the duration of the project.

1.4 INLET MARKERS

Mark every storm drain inlet within the projects boundaries with adhesive decal-discs or an imbedded concrete stamp. The CONTRACTOR shall use decal-discs on existing inlets and concrete stamps on new inlets. The concrete stamp is available from the Resident Engineer with five days advance notice. On curb inlets the concrete stamp or decal discs shall be placed on the top of curb at the inlet roof. On catch basins, the concrete stamp shall be imprinted next to the inlet grate. Any and all costs associated with this work shall be included in the storm drain marker unit bid price.

Article II. EXHIBIT F

Article III.

Article IV. INSURANCE REQUIREMENTS

Article V.

CM@RISK shall, at its sole cost and expense, procure insurance against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the performance of the WORK hereunder by the CM@RISK, CM@RISK's agents, representatives, officers, employees or subcontractors. CM@RISK shall maintain this insurance for the duration of this Contract (Agreement) and at all times thereafter when the CM@RISK is correcting, removing, or replacing WORK in accordance with this Contract. CM@RISK's liabilities, including but not limited to CM@RISK's indemnity obligations, under this Contract shall not be deemed limited in any way to the insurance coverage required herein.

1. Contractor Controlled Insurance Program. The CM@RISK through its Contractor Controlled Insurance Program (CCIP) shall provide at its expense certain insurance coverage for the CM@RISK, its SUBCONTRACTORS of every tier who are engaged in the performance of WORK at the PROJECT SITE and who are Eligible Parties. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall not be permitted by the CM@RISK to WORK at the PROJECT SITE until they are enrolled in the CCIP. The coverage provided through the CCIP shall include Commercial General Liability Insurance, Workers' Compensation and Employers Liability Insurance and Liability Insurance which is Excess over the primary Commercial General Liability and Employers Liability. The insurance coverage provided by the CCIP shall apply to the operations of each insured at the PROJECT SITE as defined in the CCIP insurance policies. The CM@RISK shall require that the insurance, indemnity and safety program provision of this Agreement be included in the Contracts with its SUBCONTRACTORS of every tier. The CM@Risk will be reimbursed for the cost of the CCIP at the fixed-price percentage of ____%. The CCIP cost includes the insurance coverage for Workers Compensation, General Liability and Excess Liability and covers all Enrolled Parties. The cost of the CCIP is included in the Guaranteed Maximum Price set forth in this Agreement, therefore, whenever the Guaranteed Maximum Price is to be increased, the increase shall include, and Contractor shall be reimbursed for, additional insurance costs to be incurred through the CCIP by the fixed-price percentage shown above and incorporated into the change order utilized to increase the Guaranteed Maximum Price.

1.1 General. The CCIP shall be subject to review and approval by the City prior to its use or a material change in the CCIP. The following defined terms apply to this Exhibit and shall be incorporated into a CCIP INSURANCE MANUAL that will be provided by the CM@RISK to each CCIP participant.

CCIP: A "CCIP" or Contractor Controlled Insurance Program is a coordinated insurance program providing certain coverages, as described in this Section, for the CM@RISK and eligible Enrolled Parties performing WORK at the PROJECT SITE.

CCIP INSURANCE MANUAL: A written description of the CCIP program containing information and instructions to ELIGIBLE PARTIES/ELIGIBLE SUBCONTRACTORS concerning the implementation and operation of the CCIP which will be a contract document incorporated by the CM@RISK into SUBCONTRACTS.

CCIP INSURER: The insurance company(ies) named on a policy or CERTIFICATE OF INSURANCE providing coverage for the CCIP.

CERTIFICATE OF INSURANCE: A document providing evidence of existing coverage for a particular insurance policy or policies.

ELIGIBLE PARTIES/ELIGIBLE SUBCONTRACTORS: Parties performing labor or services at the PROJECT SITE who are eligible to enroll in the CCIP unless an Excluded

Party.

ENROLLED PARTIES/ENROLLED SUBCONTRACTORS: Those eligible SUBCONTRACTORS who have submitted all necessary enrollment information and have been accepted into the CCIP as evidenced by a Welcome Letter and CERTIFICATE OF INSURANCE.

EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS: At the discretion of the CM@RISK, or subject to State regulations, the following parties will be excluded:

- (1) Hazardous materials remediation, removal and/or transport companies and their consultants;
- (2) Any SUBCONTRACTOR performing Structural Demolition;
- (3) Architects, engineers, and soil testing engineers, and their consultants;
- (4) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the PROJECT SITE;
- (5) SUBCONTRACTORS, and any of their respective Sub-subcontractors, who do not perform any actual labor at the PROJECT SITE;
- (6) CM@RISK's first tier SUBCONTRACTORS with aggregate subcontract values of less than \$25,000.

The CM@RISK may include or exclude any parties or entities not specifically identified in the CCIP INSURANCE MANUAL at its sole discretion, except as provided in Section 1.4, even if otherwise eligible.

PROJECT SITE: Generally defined as the "project location" and more fully identified in the SUBCONTRACT, and adjacent or nearby project site areas where incidental operations are performed excluding permanent locations of any insured party.

SUBCONTRACT: A written agreement between CM@RISK, the Contractor/Sponsor and the SUBCONTRACTOR, including Sub-Subcontractors of any tier.

SUBCONTRACTOR: Includes only those persons, firms, joint venture entities, corporations, or other parties that enter into a Contract with the CM@RISK or its SUBCONTRACTORS of any tier to perform WORK at the PROJECT SITE.

WORK: Operations, as fully described in this agreement and in SUBCONTRACTS of any tier, performed at the PROJECT SITE.

1.2 The CCIP is not intended to provide a complete insurance program to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall provide additional coverage as they deem appropriate or as required by this Section at their own expense and through their own efforts.

1.3 The coverage provided by the CCIP shall be subject to the terms, conditions and other provisions, including exclusions and limitations, contained in the policies covering the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.4 CCIP Exclusions. CCIP coverage may exclude the activities or products of the CM@RISK, SUBCONTRACTORS, suppliers, material men, vendors, haulers, truckers and "owner/operators" whose employees perform no WORK on the PROJECT SITE and/or are engaged solely in the delivery, loading, unloading, stocking, testing or hauling of equipment, supplies or materials. The CCIP will provide coverage for designated PROJECT SITE employees of ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS' employees not normally engaged at the PROJECT SITE and others who occasionally visit the PROJECT SITE and whose compensation is not normally part of the field payroll may be excluded from the CCIP. Coverage for such persons is required as specified in "COVERAGE TO BE PROVIDED BY THE CM@RISK" (Section 3) before access to the PROJECT SITE is allowed.

1.5 Elimination of Duplicate Insurance. The CM@RISK and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall eliminate from their contract price the cost of any insurance or self-insurance which duplicates insurance provided by the CCIP. The CM@RISK and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall provide to the City all such information or records as may be required or helpful in determining that such cost has not been included in their contract price.

1.6 Exclusion From or Termination of CCIP – The CM@RISK may exclude any of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS from the CCIP with thirty (30) calendar days advance written notice to the City and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. Should the CM@RISK exclude ENROLLED PARTIES/ENROLLED SUBCONTRACTORS or terminate the CCIP in whole or in part, the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall obtain replacement insurance for such coverages and amounts and subject to such terms as the CM@RISK may direct, but such coverage and amounts may not be less than that which is required of EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. In such event, there shall be allowed to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS an equitable adjustment in the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS compensation. The ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall provide to the CM@RISK, and if requested, to the City, such information or records as may be required or is helpful in determining the increased cost to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.6.1 The CM@RISK shall not voluntarily terminate the CCIP, in whole or in part. If the CCIP is terminated in whole or in part through the initiative of one or more of the CCIP INSURERS, the CCIP INSURERS shall provide not less than sixty (60)

calendar days advance written notice to the City and not less than thirty (30) days advance written notice to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.6.2 In the event of termination in whole or in part of the CCIP, the CM@RISK shall provide equivalent replacement insurance coverage for itself and the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be named as an additional insureds. The CM@RISK shall provide to the City all such information or records as may be required or helpful in determining the cost differential to CM@RISK between the CCIP and any replacement coverage. Such replacement coverage shall be approved by the City prior to becoming effective and shall not operate to increase the risk to the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

1.6.3 Termination of part or all of the CCIP shall not relieve the CM@RISK or its SUBCONTRACTORS from responsibility for implementation and enforcement of the CCIP safety program.

2. Coverage Provided by the CCIP.

2.1 Term of Coverage. Each policy shall become effective no later than the effective date of the "Notice to Proceed" issued by the City to the CM@RISK for the first phase of the contract. CCIP policies will remain in effect until the "Notice of Completion" is issued by the City to the CM@RISK.

2.2 Commercial General Liability and Contractors Pollution Liability. The CCIP shall provide for the CM@RISK and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS, primary Commercial General Liability (CGL) insurance on an occurrence form that will be at least equivalent to ISO form CG 00 01 07 98, covering Bodily Injury, Personal Injury and Property Damage Liability in the amount of not less than:

General Annual Aggregate Limit (Other than Products/Completed Operations) Per Project	\$4,000,000
Products/Completed Operations Aggregate Limit per Project	\$4,000,000
Personal Injury Liability	\$2,000,000
Each Occurrence Limit	\$2,000,000

2.2.1 All defense costs shall be outside the limits of the policies. Limits shall be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit which shall extend the last policy year Completed Operations Aggregate for a period of ten (10) years after final acceptance of the WORK by the City.

2.2.2 There shall be no endorsement or modification of the CGL limiting the scope of coverage for contractual liability. The CGL policy shall provide a Separation of Insureds or a Cross Liability Clause.

2.2.3 The City of San Diego, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be Named Additional Insured for all claims, including completed operations liability, arising out of the CM@RISK's or the CM@RISK's SUBCONTRACTORS' performance or non-performance of this agreement.

2.2.4 The CCIP shall also provide Contractors Pollution Liability Insurance covering sudden and accidental pollution incidents on an occurrence basis with limits of \$2,000,000 per occurrence. The City of San Diego, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives shall be Named Additional Insured for all claims arising out of the CM@RISK's or the CM@RISK's SUBCONTRACTORS' performance or non-performance of this agreement and shall be primary to any valid and collectable insurance carried by any of the above parties. Such policy shall contain a separation of insureds provision.

2.3 Excess Liability. The CCIP will provide Umbrella or Excess Liability policies affording coverage on a follow-form basis with limits in excess of the Commercial General Liability and Employers Liability underlying policies. Limits, when combined with the primary policy limits, shall not be less than:

Each Occurrence	\$200,000,000
General Aggregate Limit	\$200,000,000
Products-Completed Operations Aggregate	\$200,000,000

2.3.1 Limits shall be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit which shall extend the last policy year Completed Operations Aggregate for a period of ten (10) years after final acceptance of the WORK by the City.

2.3.2 The City of San Diego, the Redevelopment Agency of the City of San Diego,

and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be Named Additional Insured for all claims, including completed operations liability, arising out of the CM@RISK's or the CM@RISK's SUBCONTRACTORS' performance or non-performance of this agreement.

2.4 Workers Compensation and Employers Liability Insurance. The CM@RISK and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall be covered under the applicable laws relating to Workers Compensation and Employers Liability insurance, for all of their employees working on the PROJECT SITE. Each CCIP participant shall be issued a separate Workers Compensation and Employers Liability policy. Policy limits shall not be less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation	Statutory
Employers Liability	
Bodily injury by accident	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee
Bodily injury by disease	\$1,000,000 policy limit

2.4.1 All CCIP Workers Compensation and Employers Liability policies shall contain an endorsement stating that the insurer waives the right of subrogation against the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

2.5 Builder's Risk Property Insurance. A policy of "all risk" (Special Form) Builders Risk insurance will be provided by the CM@RISK at its expense for the benefit of the CM@RISK, its SUBCONTRACTORS and suppliers, whether or not enrolled in the CCIP, and the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation, and such other parties as the City may direct, all of whom shall be added to the policy as insureds. CM@RISK will be reimbursed for the cost of Builders Risk premiums with funds included within the GMP.

2.5.1 Any deductible that shall apply to the City of San Diego, the Redevelopment Agency of the City of San Diego, or the Centre City Development Corporation shall be paid by the CM@RISK. Except as described in Section 2.5.2 below, the maximum amount of the deductible that the other SUBCONTRACTORS and suppliers will be required to assume for each and every claim shall be determined by the amount, in dollars, of the individual insured's contract as specified below:

<u>Contract Amount</u>	<u>Deductible Amount</u>
	\$0 - \$149,999
	\$150,000 - \$1,999,999
\$2,000,000 plus	\$10,000
CM@RISK minimum deductible	\$25,000

Any policy deductible amount not paid for by the other insureds shall be paid by the CM@RISK. If the loss involves more than one insured, and the accumulated deductible of all insureds exceeds the policy deductible, the policy deductible shall be pro-rated among the claimants based upon the percentage their loss bears to the entire eligible loss.

2.5.2 Coverage for the perils of terrorism, water damage and land movement shall be covered in the Builders Risk Insurance policy(s) with the following sub-limits:

Off Premises Property	\$250,000
Property in Transit	\$250,000
Earthquake and Land Movement	\$25,000,000

The maximum deductible for the perils of earthquake and land movement will be 5% (five percent) of the values at risk at the time of loss subject to a minimum deductible of \$250,000. It shall be the responsibility of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS to bear the expense of these deductibles. If the loss involves more than one insured, then the deductible shall be pro-rated among the claimants, based upon the percentage their loss bears to the entire eligible loss except for the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Commission which shall bear no responsibility for deductible costs.

2.5.3 The City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation shall not be liable or responsible for any loss or damage whatsoever to the items excluded in the policies, and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall indemnify and hold harmless the City, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation from any claims or causes of action brought by any person or parties as a result of loss or damage to such excluded property.

2.5.4 If the City desires to occupy or use a portion or portions of the Work prior to Substantial Completion in accordance with this Agreement, City shall notify Contractor and Contractor shall immediately notify its Builder's Risk insurer and obtain an endorsement that the policy or policies shall not be cancelled or lapse on account of any such partial use or occupancy. Contractor shall obtain the endorsement prior to City's occupation and use.

2.6 Cooperation. The CM@RISK and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall cooperate fully with and provide any information or records requested by the City, regarding all aspects of the CCIP, including but not limited to claims, audit, payroll, enrollments, insurance, premiums, support services, safety and loss control activities.

Coverage to be provided by the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. Throughout the life of this Agreement ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall pay for and maintain in full force and effect, insurance described in this section.

3.1 Commercial General Liability Insurance for Off-Site Activities. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall provide Commercial General Liability Insurance evidencing coverage for their operations which are not covered by the CCIP. Coverage must not contain exclusions for blanket contractual, broad form property damage, personal injury, premises and operations, products/completed operations, fire legal liability, Explosion, Collapse and Underground Property Damage Liability. The limit of such coverage shall be not less than:

	<u>Limits</u>
General Annual Aggregate (Other than Products/Completed Operation)	\$2,000,000

Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

3.1.1 The City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be named as Additional Insureds for all claims, including completed operations liability, arising out of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS performance or non-performance of this agreement.

3.2 Automobile Liability Insurance. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall keep in full force and effect Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1,000,000. The INSURANCE CERTIFICATE shall reflect coverage for any automobile (Any Auto).

3.2.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; *except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

3.3 Workers Compensation and Employers Liability Insurance for Off-Site Employees. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall provide Workers Compensation Insurance and Employers Liability Insurance covering the employees of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS who are not normally engaged in WORK at the PROJECT SITE and whose compensation is not part of the field payroll or who are otherwise excluded under the CCIP. The policy shall protect the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS against all claims under applicable State Workers Compensation laws. Policy limits shall be not less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation	Statutory
Employers Liability	
Primary Limits	

Bodily injury by accident	\$ 1,000,000 each accident
Bodily injury by disease	\$ 1,000,000 each employee
Bodily injury by disease	\$ 1,000,000 policy limit

3.3.1 If the CM@RISK's Scope of Services includes services over or alongside any navigable waters, the CM@RISK or SUBCONTRACTORS involved in this WORK shall provide Workers Compensation coverage which shall include coverage under the U.S. Longshoreman and Harbor Workers Compensation Act, the Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

3.3.2 All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS Workers Compensation & Employers Liability, U.S. Longshoreman and Harbor Workers Compensation Act, Jones Act, Maritime Employers Liability and any other policies required in this Section 3.3 shall contain an endorsement stating that the insurer waives the right of subrogation against the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives

3.4 Hazardous Transporters Pollution Liability.

3.4.1 If the CM@RISK's WORK includes the transportation of hazardous or toxic chemicals, materials, substances, or any other pollutants, the CM@RISK or SUBCONTRACTORS of any tier shall provide Hazardous Transporters Pollution Liability insurance appropriate to cover such activities in an amount not less than \$5,000,000 Combined Single Limit per occurrence/aggregate for bodily injury, property damage and remediation, and will not contain more than a \$25,000 per claim deductible without the prior written consent of the City. The City shall reimburse the CM@RISK for this construction related expense.

3.4.2 Claims Made policies will include a five (5) year extended claims discovery period applicable to this Agreement.

3.4.3 The policy for this insurance shall include Contractual Liability coverage. Such policy shall be endorsed to specifically provide for WORK and services performed under the Agreement, and shall extend to all Contractors engaged in hazardous materials WORK.

3.4.4 The CM@RISK shall furnish to the City a policy or CERTIFICATE of Hazardous Transporters Pollution Liability insurance in which the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their elected officials, officers, employees, agents and representatives, are named as Additional Insureds for all claims, including completed operations liability. Except as provided for under California law, the policy and CERTIFICATES, and their renewals, shall also provide that thirty (30) calendar days prior written notice (10 days for cancellation due to non-payment of premium) shall be given to the City before the insurance policy is canceled, non-renewed or, except for a reduction in the aggregate limit by claims, be materially reduced. The policy or CERTIFICATE must plainly designate the name of the Project. This CERTIFICATE must be furnished to the City, evidencing compliance with the outlined requirements, and prior to the CM@RISK beginning its WORK on the Project.

4. Additional Coverage to be Provided by the CM@RISK for Activities Not Performed at the PROJECT SITE. Throughout the life of this Agreement, the CM@RISK shall pay for and maintain in full force and effect the insurance described in this section.

4.1 Workers Compensation and Employers Liability Insurance. The CM@RISK and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS shall be covered under the applicable laws relating to Workers Compensation and Employers

Liability insurance, for all of their employees working on the PROJECT. Each CCIP participant shall be issued a separate Workers Compensation and Employers Liability policy. Policy limits shall not be less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation:	Statutory
Employers Liability:	
Bodily injury by accident	\$2,000,000 each accident
Bodily injury by disease	\$2,000,000 each employee
Bodily injury by disease	\$2,000,000 policy limit

4.1.1 Workers Compensation and Employers Liability policies shall contain an endorsement stating that the insurer waives the right of subrogation against the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

4.2 Commercial General Liability and Contractors Pollution Liability. The CM@RISK shall maintain in full force and effect primary Commercial General Liability (CGL) insurance on an occurrence form that will be at least equivalent to ISO form CG 00 01 07 98, covering Bodily Injury, Personal Injury and Property Damage Liability in the amount of not less than:

	<u>Limits</u>
General Annual Aggregate Limit	
(Other than Products/Completed Operations) Per Project	\$4,000,000
Products/Completed Operations Aggregate Limit per Project	\$4,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence Limit	\$2,000,000

4.2.1 All defense costs shall be outside the limits of the policies. Limits shall be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit which shall extend the last policy year Completed Operations Aggregate for a period of five (5) years after final acceptance of the WORK by the City.

4.2.2 There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for contractual liability. The CGL policy shall provide a Separation of Insureds or a Cross Liability Clause.

4.2.3 The City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be named as Additional Insureds for all claims including completed operations liability, by endorsing the policy with ISO form CG 20 10 10 01 or equivalent

4.3 Automobile Liability Insurance for Activities On and Off the PROJECT SITE. The CM@RISK shall keep in full force and effect Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage that is at least as broad. The CERTIFICATE OF INSURANCE shall reflect coverage

for any automobile (Any Auto) for bodily injury and property damage with a combined single limit of not less than \$1,000,000.

4.3.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; *except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

4.4 Contractors Professional Liability for Work On and Off the PROJECT SITE. In addition to the coverages outlined above, the CM@RISK shall, at its sole expense, be insured for Contractors Professional Liability with a limit dedicated to this project of not less than \$10,000,000 per claim. A project specific limit dedicated to this project would be an additional \$1M minimum (approximately). It is not included within the GMP.

4.5 Excess Liability. The CM@RISK will provide Umbrella or Excess Liability policies affording coverage on a follow-form basis for claims not covered by the CCIP with limits in excess of the Commercial General Liability, Automobile Liability and Employers Liability underlying policies. Limits, when combined with the primary policy limits, shall not be less than:

Each Occurrence	\$100,000,000
General Aggregate Limit	\$100,000,000
Products-Completed Operations Aggregate	\$100,000,000

4.5.1 Limits shall be reinstated annually.

4.5.2 The City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be added as Additional Insureds for all claims including completed operations liability.

5. Coverage to be provided by the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. Throughout the life of this Agreement, the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall pay for and maintain in full force and effect the insurance described in this Section.

5.1 Commercial General Liability Insurance. EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall maintain in full force and effect, Commercial General Liability (CGL) Insurance coverage for their operations written on an ISO occurrence form CG 00 01 07 98 or an equivalent form providing coverage that is at least as broad which shall cover liability arising from bodily injury, personal injury and property damage. The City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives shall be named as Additional Insureds by endorsing the policy with ISO form CG 20 10 10 01 or equivalent.

5.1.1 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the CGL policy or policies is primary to any insurance or self-insurance of the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their elected officials, officers, employees, agents and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives shall be in excess of the SUBCONTRACTORS insurance and shall not contribute to it. The limit of such coverage shall be not less than:

General Annual Aggregate	
(Other than Products/Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

5.2 Automobile Liability Insurance. EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall provide Automobile Liability Insurance evidencing coverage in an amount not less than \$1,000,000 Combined Single Limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles. CERTIFICATES OF INSURANCE shall reflect coverage for any automobile (Any Auto).

5.2.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS; *except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any

duty of indemnity coverage for the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, , and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

5.3 Workers Compensation and Employers Liability Insurance for EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. All EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall provide Workers Compensation Insurance and Employers Liability Insurance covering their employees. The policy shall protect the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS against all claims under applicable State Workers Compensation laws.

5.3.1. Policy limits shall be not less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation	Statutory
Employers Liability:	
Bodily injury by accident	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee
Bodily injury by disease	\$1,000,000 policy limit

5.3.2 If the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS Scope of Services includes services over or alongside any navigable waters, the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS or Contractors involved in this WORK shall provide Workers Compensation coverage which shall include coverage under the U.S. Longshoreman and Harbor Workers Compensation Act, the Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

5.3.3 All EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS Workers Compensation and Employers Liability policies shall contain an endorsement stating that the insurer waives the right of subrogation against the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives

5.4 Contractors Hazardous Transporters Pollution Liability Insurance.

5.4.1 Unless the CONTRACTOR provides a MCS 90 endorsement with its Business Automobile Liability policy, the following coverage and all related endorsements must be provided by the CONTRACTOR. If the CONTRACTOR subcontracts the transport of hazardous materials, the SUBCONTRACTOR performing this scope of work will be required to provide the MCS 90 endorsement to the City or comply with the following requirements. CONTRACTOR shall provide at its expense or cause its subcontractor to provide Contractors Hazardous Transporter Pollution Liability Insurance including contractual liability coverage to cover liability arising out of transportation of hazardous or toxic materials, substances, or any other pollutants by the CONTRACTOR or

any SUBCONTRACTOR in an amount not less than \$2,000,000 per occurrence and in the aggregate for bodily injury and property damage. All cost of defense shall be outside the limits of the policy. The deductible shall not exceed \$25,000 per occurrence. Any such insurance provided by a SUBCONTRACTOR must be approved separately in writing by the City. Approval of the substitution of a SUBCONTRACTOR's insurance shall require a certification by the CONTRACTOR that all activities for which Contractors Hazardous Transporters Pollution Liability Insurance will provide coverage will be performed exclusively by the SUBCONTRACTOR providing the insurance. There shall be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies shall be procured before the Work commences and shall be maintained for the duration of this Contract.

5.4.2 Claims Made policies shall be procured before the Work commences shall be maintained for the duration of this Contract and shall include a 12 month extended Claims Discovery period applicable to this contract or the existing policy or policies must continue to be maintained for 12 months after completion of the Work under this Contract without advancing the retroactive date.

5.4.3 Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization.

5.4.4 The CM@RISK and (or) the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall furnish to the City a policy or CERTIFICATE of Hazardous Transporters Pollution Liability insurance in which the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives, are named as Additional Insureds for all claims including completed operations liability. The policy or CERTIFICATE must plainly designate the name of the Project. This certificate must be furnished to the City, evidencing compliance with the outlined requirements, and prior to the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS beginning their WORK on the Project.

5.4.5 Except as provided under California law, the policy or policies must provide that the City is entitled to thirty days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

5.5 Contractors Pollution Liability Insurance. Contractor shall procure and maintain at its expense or cause its SUBCONTRACTOR to procure and maintain Contractors Pollution Liability Insurance including contractual liability coverage to cover liability arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances or any other pollutants by the Contractor or any SUBCONTRACTORS in an amount not less than a \$2,000,000 limit for bodily injury and property damage. All costs of defense shall be outside the limits of the policy. Any such insurance provided by the SUBCONTRACTOR must be approved separately in writing by the City. Approval of a substitution of a contractor's insurance shall require a certification by the Contractor that all activities for which Contractors Pollution Liability Insurance will provide coverage will be performed exclusively by the subcontractor providing the insurance. The deductible shall not exceed \$25,000 per claim.

5.5.1 Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There shall be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies shall be procured before the Work commences and shall be maintained for the duration of the Contracts.

5.5.2 Claims Made policies shall be procured before the Work commences, shall be maintained for the duration of their Contract, and shall include a 12 month extended Claims Discovery Period applicable to this Contract or the existing policy or policies must continue to be maintained for 12 months after the completion of the Work under the Contract without advancing the retroactive date.

5.5.3 Except as provided for under California law, the policy or policies must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

Acceptability of Insurers.

6.1 CCIP. All CCIP insurance required by express provision of Section 1 and all insurance to be carried by the CM@RISK required by express provision of Section 4 shall be carried only by responsible insurance companies that are rated "A-" and "X" or better by the A. M. Best Key Rating Guide, that are authorized to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers as described in 6.3.

6.2 General. Except for the State Compensation Insurance Fund, all non-CCIP insurance required by this Agreement of EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS as described herein or in other Contract Documents shall be carried only by responsible insurance companies with a rating of, or equivalent to, at least "A-, V" by A.M. Best Key Rating Guide, and that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

6.3 Non-Admitted Carriers. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted insurance carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

Material Breach. Maintenance of specified insurance coverage is a material element of this contract and CM@RISK's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Specific Provisions Required. Except as noted below, each policy required by this Exhibit shall expressly provide, and an endorsement shall be submitted to the City, that:

- 8.1 The required policies are primary and non-contributing to any insurance that may be carried by the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives, as reflected in an endorsement, which shall be submitted to the City. Any insurance maintained by the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their elected officials, officers, employees, agents and representatives shall be in excess of and shall not contribute to the insurance provided by the CM@RISK and its SUBCONTRACTORS.

- 8.2 The CM@RISK waives all rights and shall require its SUBCONTRACTORS to waive their rights, against the City of San Diego, the Redevelopment Agency of the City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives for the recovery of damages to the extent these damages are covered by any insurance or self-insurance provided by or to the CM@RISK or its SUBCONTRACTORS.

CM@RISK Notice to the City.

- 9.1 Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium is acceptable) of cancellation or non-renewal of the policy or policies. CERTIFICATES OF INSURANCE provided as evidence of coverage to the City shall not contain the qualifying words "will endeavor" and "but failure to mail such notice shall impose no such obligation or liability of any kind upon the Company, its agents or representatives" in the cancellation provisions.
- 9.2 The CM@RISK shall be the First Named Insured under commercial property and casualty insurance policies the CM@RISK has placed insuring the CM@RISK, its SUBCONTRACTORS, the City and others relative to its work under this agreement. Within the terms of these policies, the CM@RISK is a party entitled to receive notice from its insurance companies of cancellation or non-renewal or material adverse change to these policies. If, after the exercise of due diligence by the CM@RISK, its insurance carriers are not willing to comply with all of the provisions of section 9.1, the CM@RISK agrees that within five (5) calendar days after receipt by the CM@RISK of any written notice from any of its insurance companies, of the cancellation, non-renewal or material adverse change to any policy, the CM@RISK shall forward copies of any such notice by U.S. Certified Mail (RRR) and by facsimile transmission to:

City of San Diego and
Attn: Darren Greenhalgh
Engineering & Capital Projects
Executive Complex, 14th Floor
1010 Second Avenue
San Diego, CA 92101
(619) 533-3107 (fax)

City of San Diego
Attn: Claudia Castillo del Muro
Civic Center Plaza, 10th Floor
MS 51 B
1200 Third Avenue
San Diego, CA 92101
(619) 236-6106 (fax)

9.2.1 The CM@RISK agrees that its notice obligations as set forth in this section shall exist notwithstanding that the insurance company may send notices directly to the City of San Diego, the Redevelopment Agency of the City of San Diego, and/or the Centre City Development Corporation.

9.2.2 The CM@RISK agrees that its notice obligations as set forth in this section shall apply to any policies of insurance that replace the current policies and/or provide substantially the same coverage for the City of San Diego, Redevelopment Agency of the City of San Diego, Centre City Development Corporation with respect to WORK performed under this Agreement.

10. Adjustments to Insurance Coverage or Limits. The City may request a proposal from the CM@RISK for adjusting insurance coverage and/or limits.

11. Reservation of Rights. At any time prior to the issuance by the City of the Notice to Proceed for phase 1 of construction, the City reserves the right to replace the CCIP with an Owner Controlled Insurance Program (OCIP) of like kind and quality providing substantially the same coverage. The contract price shall be reduced by 3.95% to reflect the savings to the CM@RISK provided by the OICP insurance policies and services. The City also reserves the right to replace the builders risk policy required in section 2.5 above with a policy providing substantially the same coverage. The City reserves the right, from time to time, to review the CM@RISK's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to the City. The City may request a proposal from the CM@RISK for adjusting insurance coverage and/or limits. The City will reimburse the CM@RISK for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

is paragraph could significantly delay the start of the project if in fact, it is executed. Does the 3.95% include CCIP? Builders' Risk?

12. Insurance Compliance.

12.1 The CM@RISK shall not begin WORK or services under this Agreement until it has:

- a) obtained all policies required in this Section,
- b) provided CERTIFICATES OF INSURANCE for each such policy to the City,
- c) obtained City approval of each insurance company or companies,
- d) confirmed that all policies contain the specific provision required in this Agreement.

12.1.1 The CM@RISK shall not allow any SUBCONTRACTOR of any tier to begin WORK or services until all insurance required in this Section has been obtained by the SUBCONTRACTOR and verified by the CM@RISK.

12.2 The CM@RISK shall furnish to the City documents including but not limited to CERTIFICATES OF INSURANCE with endorsements attached evidencing the insurance required herein, and shall furnish renewal documentation prior to expiration of this insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to request, and the CM@RISK shall submit, certified complete copies of any policy upon reasonable request by the City.

12.3 Maintenance of specified insurance coverage is a material element of this Agreement and CM@RISK's failure to maintain or renew coverage or to provide evidence or renewal during the term of this Agreement may be treated as a material breach of contract by the City.

12.4 Further, the CM@RISK shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

13. Deductibles. Any self-insurance and all deductible costs on any policy utilized or provided by the CM@RISK, ENROLLED PARTIES/ENROLLED SUBCONTRACTORS and EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS shall be their responsibility.

EXHIBIT G

PHASED FUNDED SCHEDULE

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT H

TITLE 24/ADA COMPLIANCE CERTIFICATION

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT I

DRUG FREE WORKPLACE CERTIFICATION

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT J
EOCP REQUIREMENTS
(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT K
CALIFORNIA STATE REQUIREMENTS
(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT K

CALIFORNIA STATE REQUIREMENTS

NOTICE OF LABOR COMPLIANCE PROGRAM APPROVAL

The City of San Diego received initial approval as a Labor Compliance Program on August 11, 2003. The limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) does not apply to contracts under jurisdiction of the Labor Compliance Program. Inquiries, questions, or assistance about the Labor Compliance Program should be directed to: Labor Compliance Program, 1200 Third Avenue, Suite 200, MS 56P, San Diego Ca 92101, Tel. 619-235-5740

1. State Wage Determinations:

- (a) As required by Sections 1720 et. seq., 1770 et. seq. and the following, of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the OWNER, which copies shall be made available to any interested party on request. Copies of the prevailing rate of per diem wages may also be found at http://www.dir.ca.gov/dlsr/statistics_research.html. The CONTRACTOR shall post a copy of such determination at each job site.
- (b) In accordance with Section 1775 of the California Labor Code, the CONTRACTOR shall, as a penalty to the OWNER, forfeit not more than \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any Subcontractor under him or her.
- (c) A copy of the above General Prevailing Wage Determination is on file and available for inspection at the Purchasing & Contracting Department, 1200 Third Avenue, Suite 200, San Diego, California 92101.
- (d) The successful bidder intending to use a craft or classification not shown in the Prevailing Rate Determination may be required to pay the rate of the craft or classification most closely related to it.

2. Workers' Compensation:

- (a) In accordance with the provisions of Section 3700 of the California Labor Code, the CONTRACTOR shall secure the payment of compensation to his employees.
- (b) Prior to beginning work under the Contract, the CONTRACTOR shall sign and file with the OWNER the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the WORK of this Contract."
- (c) Notwithstanding the foregoing provisions, before the Contract is executed on behalf of the OWNER, a bidder to whom a contract has been awarded shall furnish satisfactory evidence that it has secured in the manner required and provided by law the payment of workers' compensation.

3. **Apprentices on Public Works:** The CONTRACTOR shall abide by the requirements of Sections 1777.5, 1777.6, and 1777.7 of the State of California Labor Code concerning the employment of apprentices by a Contractor and any Subcontractor performing a public works contract.
4. **Working Hours:** The CONTRACTOR shall comply with all applicable provisions of Section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CONTRACTOR shall, as a penalty to the OWNER, forfeit \$25.00 for each worker employed in the execution of the Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.
5. **CONTRACTOR Not Responsible For Damage Resulting From Certain Acts of God:** As provided in Sections 7105 of the California Public Contract Code (A.B. 3416), the CONTRACTOR shall not be responsible for the cost of repairing or restoring damage to the WORK which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the WORK damaged was built in accordance with accepted and applicable building standards and the plans and specifications of the OWNER. The CONTRACTOR shall obtain insurance to indemnify the OWNER for any damage to the WORK caused by an act of God if the insurance premium is a separate bid item in the bidding schedule for the WORK. For purposes of this Section, the term "acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and tidal waves.
6. **Milestone:** In accordance with the Sections 3086 and 3093 of the California Civil Code, within 10 days after date of acceptance of the WORK by the OWNER's governing body, the OWNER will file, in the County Recorder's office, a Milestone of the WORK.
7. **Unpaid Claims:** If, at any time prior to the expiration of the period for service of a stop notice, there is served upon the OWNER a stop notice as provided in Sections 3179 and 3210 of the California Civil Code, the OWNER shall, until the discharge thereof, withhold from the monies under its control so much of said monies due or to become due to the CONTRACTOR under this Contract as shall be sufficient to answer the claim stated in such stop notice and to provide for the reasonable cost of any litigation thereunder; provided, that if the CONSTRUCTION MANAGER shall, in its discretion, permit CONTRACTOR to file with the OWNER the bond referred to in Section 3196 of the Civil Code of the State of California, said monies shall not thereafter be withheld on account of such stop notice.
8. **Concrete Forms, Falsework, and Shoring:** The CONTRACTOR shall comply fully with the requirements of Section 1717 of the Construction Safety Orders, State of California, Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same prior to placement of concrete. Where the said Section 1717 requires the services of a civil engineer registered in the State of California to approve design calculations and working drawings of the falsework or shoring system, or to inspect such system prior to placement of concrete, the CONTRACTOR shall employ a registered civil engineer for these purposes, and all costs therefore shall be included in the price named in the Contract for completion of the WORK as set forth in the Contract Documents.
9. **Retention From Monthly Payments:** Pursuant to Section 22300 of the California Public Contract Code, the CONTRACTOR may substitute securities for any money withheld by the OWNER to insure

performance under the Contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the OWNER or with a state or federally chartered bank as the escrow agent, who shall return such securities to the CONTRACTOR upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the OWNER which provides that no portion of the securities shall be paid to the CONTRACTOR until the OWNER has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The OWNER will not certify that the Contract has been satisfactorily completed until at least 30 days after filing by the OWNER of a Milestone. Securities eligible for investment under Section 22300 shall be limited to those listed in Section 16430 of the Government Code and to bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the OWNER.

- 10. Public Works Contracts; Assignment to Awarding Body:** In accordance with Section 7103.5(b) of the California Public Contract Code (A.B. 3416), the CONTRACTOR and Subcontractors shall conform to the following requirements. In entering into a public works contract or a Subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the Subcontract. This assignment shall be made and become effective at the time the awarding body tenders to the CONTRACTOR, without further acknowledgment by the Parties.

11. Payroll Records; Retention; Inspection; Noncompliance Penalties; Rules and Regulations:

- (a) In accordance with Section 1776 of the California Labor Code each contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- (b) The payroll records enumerated under Paragraph 11(a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in Paragraph 11(a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in Paragraph 11(a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards

Enforcement. If the requested payroll records have not been provided pursuant to Paragraph 11(b)(2) the requesting Party shall, prior to being provided the records, reimburse the costs of preparation by the CONTRACTOR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.

- (c) Each contractor shall file a certified copy of the records, enumerated in Paragraph 11(a) with the entity that requested the records within 10 days after receipt of a written request.
- (d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR awarded the contract or performing the contract shall not be marked or obliterated.
- (e) The CONTRACTOR shall inform the body awarding the contract of the location of the records enumerated under Paragraph 11(a) including the street address, city and county, and shall, within 5 working days, provide a notice of change of location and address.
- (f) In the event of noncompliance with the requirements of this Section, the CONTRACTOR shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the CONTRACTOR must comply with this Section. Should noncompliance still be evident after the 10-day period, the CONTRACTOR shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- 12. **Cultural Resources:** The CONTRACTOR's attention is directed to the provisions of the Clean Water Grant Program Bulletin 76A which augments the National Historic Preservation Act of 1966 (16 U.S.C. 470) as specified under Section [01560], "Temporary Environmental Controls" of the General Requirements.
- 13. **Permits Required for Hazardous Employment:** The CONTRACTOR shall comply with all applicable provisions of Section 6500 of the California Labor Code relating to those employments or places of employment that by the nature involve substantial risk of injury.
- 14. **Protection of Workers In Trench Excavations:** As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, the CONTRACTOR shall submit for acceptance by the OWNER or by a registered civil or structural engineer, employed by the OWNER, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the

price named in the Contract for completion of the WORK as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the OWNER, the CONSTRUCTION MANAGER, the DESIGN CONSULTANT or any of their officers, agents, representatives, or employees.

15. Travel and Subsistence Pay:

- (a) As required by Section 1773.8 of the California Labor Code, the CONTRACTOR shall pay travel and subsistence payments to each workman needed to execute the WORK, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
- (b) To establish such travel and subsistence payments, the representative of any craft, classification or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter shall establish such travel and subsistence payments whenever filed 30 days prior to the call for bids.

16. Removal, Relocation, or Protection to Existing Utilities:

- (a) In accordance with the provisions of Section 4215 of the California Government Code, any contract to which a public agency as defined in Section 4401 is a Party, the public agency shall assume the responsibility, between the Parties to the contract, for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the site of any construction project that is a subject of the contract, if such utilities are not identified by the public agency in the plans and specifications made a part of the invitation for bids. The agency will compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of the CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.
- (b) The CONTRACTOR shall not be assessed Liquidated Damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities.
- (c) Nothing herein shall be deemed to require the public agency to indicate the presence of existing service laterals or appurtenances when the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of construction; provided, however, nothing herein shall relieve the public agency from identifying main or trunklines in the plans and specifications.
- (d) If the CONTRACTOR while performing the contract discovers utility facilities not identified by the public agency in the contract plans or specifications, he shall immediately notify the public agency and utility in writing.

- (e) The public utility, where they are the owner, shall have the sole discretion to perform such repairs or relocation work or permit the CONTRACTOR to do such repairs or relocation work at a reasonable price.

17. **Contractor License Requirements:** In accordance with Section 7028.15 of the California Business and Professions Code, a licensed contractor shall not submit a bid to a public agency unless his or her contractor's license number appears clearly on the bid, and the license expiration date is stated. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered non-responsive and shall be rejected by the public agency.

18. **Certain Claims:**

- (a) Notwithstanding the foregoing, any demand of \$375,000, or less, by the CONTRACTOR for a time extension; payment of money or damages arising from the work done by or on behalf of the CONTRACTOR pursuant to this contract; or payment of an amount which is disputed by the OWNER shall be processed in accordance with the provisions of Public Contracts Code Section 20104 et seq. relating to informal conferences, non-binding judicially supervised mediation and judicial arbitration.
- (b) A single written claim shall be filed under this section prior to this date of final payment for all demands arising out of the contract.
- (c) Within thirty (30) days of the receipt of the claim, the OWNER may request additional documentation supporting the claim or relating to defenses or claims the OWNER may have against the CONTRACTOR. If the amount of the claim is less than \$50,000, the CONTRACTOR shall respond to the request for additional information within fifteen (15) days after the receipt of the request. The CONTRACTOR shall respond to the request within thirty (30) days of receipt if the amount of the claim exceeds \$50,000 but is less than \$375,000.
- (d) Unless further documentation is requested, the OWNER shall respond to the claim within forty-five (45) days if the amount of the claim is less than \$50,000 or within sixty (60) days if the amount of the claim is more than \$50,000 but less than \$375,000. If further documentation is requested, the OWNER shall respond within the same amount of time taken by the CONTRACTOR to respond or fifteen (15) days, whichever is greater, after receipt of further information if the claim is less than \$50,000. If the claim is more than \$50,000 but less than \$375,000 and further documentation is requested by the OWNER, the OWNER shall respond within the same amount of time taken by the CONTRACTOR to respond or thirty (30) days, whichever is greater.
- (e) If the CONTRACTOR disputes the OWNER's response, or the OWNER fails to respond, the CONTRACTOR may demand an informal conference to meet and confer for settlement of the issues in dispute. The demand shall be served on the OWNER within fifteen (15) days after the deadline of the OWNER to respond or within fifteen (15) days of the OWNER's response, whichever occurs first. The OWNER shall schedule the meet and confer conference within thirty (30) days of the request.
- (f) If the meet and confer conference does not produce a satisfactory request, the CONTRACTOR may pursue remedies authorized by law.

EXHIBIT L

DESIGNATION OF AUTHORIZED REPRESENTATIVES

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT M

PAYMENT/PERFORMANCE BOND FORMS

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT N

CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT O
LEED POINTS
(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT P

OFFICE SPACE FURNISHINGS

(TO BE PROVIDED IN FINAL DRAFT)

EXHIBIT Q – CONTAMINATED SOIL REMOVAL

PART 1 – GENERAL

1.1 SCOPE OF WORK IN THIS SECTION

The CMAR shall hire a SUB-ENVIRONMENTAL CONTRACTOR to act as the Environmental Monitor that meets the requirements referenced in the Ancillary Development Portion of the East Village Redevelopment Area Master Work Plan, Addendum No. 4 dated April 28, 2003 (MWP Addendum No. 4), Page 4.

CMAR is responsible for providing a SUB-ENVIRONMENTAL CONTRACTOR to act as the Environmental Monitor responsible for:

1. Providing a Property Mitigation Plan (PLAN) which meets the requirements listed in the Property Closure Report dated 11/14/07, the San Diego Downtown Ballpark and the MWP Addendum No. 4 (excluding the submittal of reports to Environmental Business Solutions now known as SCS Engineers), and County of San Diego, Department of Environmental Health (DEH) Site Assessment and Mitigation Manual (SAM Manual).
2. Including in the PLAN details on how the remaining contaminated soil will be removed and confirmation sampling activities be conducted as stated in the Property Closure Report and MWP Addendum No. 4.
3. Including in the PLAN details on how visual monitoring of all construction excavation, trenching, right-of-way work for utilities, digging, or any disturbance of soil that involves the export of soil from the site will be conducted in order to identify any changes in soil coloring, signs of burn ash, or the presence of other contamination.
4. Providing a Final Report to DEH which is accepted and approved by them. The Final Report shall include but is not limited to, the documentation of the monitoring of all construction excavation activities as stated in the MWP Addendum No. 4.
5. Providing a health and safety plan for excavation and grading personnel and the public (if required).

The WORK in this section includes excavation, handling, testing, stockpiling, loading, and off-site disposal and /or treatment of contaminated soils. Non-hazardous and potentially hazardous waste soils shall be excavated, stockpiled, and legally disposed of off-site. CMAR shall provide all transportation and disposal costs. Any soils identified as hazardous waste shall be handled as hazardous waste at the final disposal location and not deregulated by sending out-of-state or to

tribal lands. RESIDENT ENGINEER shall approve of each transporter and disposal location prior to transporting any waste to the facility.

The limits of remediation are defined as the limit of excavation required to complete the project as specified in project plans for San Diego New Main Library (33717 D). For this purpose, the limits of demolition on these plans are considered the limits of remediation.

The SUB-ENVIRONMENTAL CONTRACTOR shall coordinate the full scope of soil to be removed with the overall general requirements of the overall contract. Determine the extent of the anticipated construction work and remove the contaminated soil which is required to be removed so as not to impact the overall work to construct the project. The WORK includes the waste determination of the contaminated soils, confirmation sampling of the excavated clean up area, and any laboratory analysis that will be required. The use of an on-site X Ray fluorescence (XRF) and other on-site sampling and analysis equipment is recommended to hasten the identification process. Excavation work shall be diligently and carefully executed to precisely remove the lens of contaminated soil from the other soil types identified in the field in order to avoid unnecessary mixing of soils. The Plan shall include means and methods that will minimize any delays that may occur during the testing, and disposal process.

All excavations involving the assessment and mitigation of soil known or suspected to contain hazardous substances will be done at the direction of the SUB-ENVIRONMENTAL CONTRACTOR per the approved PLAN.

1.2 REFERENCES

A. The WORK of the Section is referenced in the following reports.

1. *Geotechnical Report* available for review with the Nikki Lewis, 619-533--6653 at 1010 Second Ave., Suite 1400, San Diego, CA 92101.
2. Appendix "D" *Property Mitigation Plan: Police Vehicle Maintenance Yard (PMP)* prepared by Environmental Business Solutions and dated March 17, 2005.
3. *Final Property Report* prepared by SCS Engineers and dated November 14, 2007, Including DEH- Master Work Plan dated July 30, and Property Mitigation Plan dated March 14, 2005.
4. *Master Workplan Addendum No. 4, Monitoring Plan for Construction Excavations and Response Plan for Hazardous Substance Releases, Portion of the East Village Redevelopment Area, Environmental Remediation*, prepared by Environmental Business Solutions dated April 28, 2003.

Master Workplan Addendum No. 4, Portion of the East Village Redevelopment Area, Environmental Remediation, prepared by Environmental Business Solutions dated June 13, 2003.

5. *Mitigated Negative Declaration LDR No. 41-0980 and Addendum to MND 41-0980*

1.3 RELATED SECTIONS

- A. Other Sections of the Specification, not referenced below, shall apply to the extent required for proper performance of the WORK.

1.4 STANDARD SPECIFICATIONS

- A. Except as otherwise indicated in this Section of the Specifications, the CMAR shall comply with the 2009 edition of the Standard Specifications for Public Works Construction together with the 2009 edition of the City of San Diego Supplemental Amendment.
- B. For soils containing hazardous substances, the CMAR shall follow the guidelines of the current edition of the County of San Diego, Department of Environmental Health (DEH) Site Assessment and Mitigation Manual (SAM Manual), MWP Addendum No. 4, and the Closure Letter dated June 11, 2009.

1.5 SUBMITTALS

- A. The CMAR shall submit the following to the RESIDENT ENGINEER:

1. Property Mitigation Plan: Submit a detailed plan as described in MWP Addendum No. 4, of the procedures proposed to comply with the requirements of this specification, including but not limited to:
 - a. The sequencing of site remediation work to include but not limited to the methods to be used to precisely remove the identified contaminated soil; confirmation sampling distances on the bottom of the excavated area, the upper zone, and side wall sampling on the west side and east side within areas where contaminated soil was identified.
 - b. The plan for visually monitoring the areas of unknown contamination including but not limited to the excavation, digging, utilities work in the rights-of-way, trenching, or any disturbance of soil.
 - c. The name and qualifications of the full-time Supervisor who shall be the SUB-ENVIRONMENTAL CONTRACTOR on site carrying out the PLAN.
 - d. Waste Profile Testing methods which include lead, furans and dioxin; analysis methods, laboratory subcontractors, and quality assurance procedures and methods.
 - e. Decontamination procedures, waste handling procedures, and other descriptions of the means, methods, techniques, sequences, and procedures for completing the Work of this Section.
 - f. A Contingency Plan which includes emergencies including but not limited to, chemical release and notification procedures, or any other event that may require modification or

abridgment of decontamination or Work area isolation procedures. The CMAR shall include in the PLAN specific procedures for decontamination or Work area isolation.

2. Transportation and Disposal Information Submittal:

- a. Submit names, addresses, EPA Identification Numbers, and proof of insurance for each hazardous waste disposal company and hazardous waste transporter to be utilized to complete this scope of work
- b. Submit proof for each Hazardous Waste Transporter, a copy of their current California Hazardous Waste Transporter's License, Highway Patrol license, and Federal Transporter's Number.
- c. Environmental Liability Insurance Certificate: Submit proof (copy of insurance certificate) for each Hazardous Waste Transporter and Hazardous Waste Disposal Facility showing a minimum \$2,000,000 environmental liability insurance. This insurance shall be in addition to the general liability insurance required for the CONTRACT.

3. OTHER SUBMITALS

- a. Non-hazardous Waste Delivery Records: Submit detailed delivery tickets, prepared, signed, and dated by an agent of the landfill, certifying the amount of non-hazardous waste/contaminated soil materials delivered to the landfill.
- b. Personal Training Certification: Prior to commencing Work, CMAR shall submit documentation certifying that all of the employees requiring Hazwoper Training have the applicable Cal/OSHA certification, and any other safety training required.
- c. Health and Safety Plan: Prior to commencing Work, CMAR shall submit a site-specific Health and Safety Plan to the RESIDENT ENGINEER. All field activities shall be performed in accordance with the approved Health and Safety Plan. CMAR shall familiarize all workers with the Plan. A copy of the Plan shall be maintained on-site for the duration of the Work.
- d. Certificate of Completion: CMAR shall provide a Certificate of Completion to the ENGINEER within ten (10) days of completion of the phase of the WORK.
- e. CMAR shall submit at the end of the Work, all documents, reports, correspondence, and approvals from the County of San Diego, DEH, Site Assessment and Mitigation regarding this project and the approval of the PLAN and approval of the Final Report.

1.6 QUALITY ASSURANCE

A. Permits, State License, Notification and Regulatory Requirement:

1. Pay for and obtain all required permits all required approvals, clearances, notifications, and licenses in conjunction with hazardous material and hazardous waste abatement, removal, transportation and disposal, and furnish timely notification of such actions required by Federal, State, regional, and local authorities having jurisdiction. (NOTE: this site is covered by the Lead Agency Destination Program administered by CAL-EPA through which the County of San Diego Department of Environmental Health (DEH) has been identified as the Lead Agency.)
2. CMAR shall be responsible for costs for all approvals, clearances, licensing, and notification requirements, any submittals required, and all other fees related to the ability of the CMAR to perform the Work of this Section.
3. The CMAR shall indemnify the OWNER from, and pay for all claims resulting from CMAR's failure to adhere to these provisions.
4. All work shall conform to the standards set by applicable Federal, State, and local laws, regulations, ordinances, and guidelines in such form in which they exist at the time of the work on the contract and as may be required by subsequent regulations.

B. Qualifications:

1. All site remediation and excavation and related Work shall be accomplished by the CMAR or SUBCONTRACTOR specializing in, and having a record of, not less than five years successful experience in such work and possess an active and valid California State CONTRACTOR's License for the classification of Work to be performed, including a Hazardous Substances Removal Certification.
2. SUB-ENVIRONMENTAL CONTRACTOR shall have not less than five years successful experience in such work within the 24-month period preceding the start of the project.

C. Training:

1. Although the known presence of lead in the Site soils is not classified by DEH as posing a health risk, there is always a potential for adverse health effects for workers at the Site and for the surrounding community. All workers and supervisors involved in excavation and grading activities shall have completed a training course provided by an accredited training

provider in accordance with the provisions of 29 CFR 1910.120., when required to complete the Work.

PART 2 – EXECUTION OF SCOPE OF WORK

1.1 MATERIALS

- A. Provide all tools, equipment, and materials required to perform Work.
- B. Caution Signs and Labels: Provide any required caution signs printed in English and Spanish at approaches to Work areas. Locate signs at such distance that personnel may read the sign and take the necessary precautions before entering the Work area. Provide caution labels printed in English and Spanish. Affix labels to hazardous material, scrap, waste, debris, and other potentially-contaminated materials or wastes.

1.2 MATERIAL AND WASTE HANDLING

- A. Remove from the premises all soil characterized as a waste by the SUB-ENVIRONMENTAL CONTRACTOR. Dispose of materials that become contaminated with hazardous material and hazardous waste in accordance with applicable regulatory standards.
- B. CMAR is responsible for minimizing the generation of dust during excavations and soil transport by using water spray. CMAR is to avoid excessive water usage causing run off. CMAR shall provide all necessary equipment, hoses, and other items necessary to provide adequate dust control.
- C. All soils to be stockpiled in accordance with the DEH approved PLAN and *Soil Management Plan* dated April 28th, 2005 of the PMP and MWP and Addendum No. 4 dated April 28, 2003 of the MWP. CMAR shall manage soil stockpiles on-site, including creating separate stockpiles for different classifications of non-hazardous and potentially hazardous soil, transferring soil between stockpiles as necessary for efficient management of space. CMAR shall also cover and secure soil piles with plastic sheeting as necessary to minimize dust and odors and potential runoff from precipitation. The plastic sheeting must be secure enough to withstand the reasonably expected wind conditions and the CMAR shall maintain the plastic sheeting from the creation of each stockpile until each stockpile is loaded for transportation to disposal facility. Damaged or missing sheeting shall be repaired and/or corrected immediately.

1.3 WORKER PROTECTION

- A. Reporting Unusual Events: When an event of unusual and significant nature occurs at the site, CMAR shall prepare and submit a special report listing chain of events, persons participating, responses and similar pertinent information. When such events are known or predictable in advance, advise the RESIDENT ENGINEER at the earliest possible date.
- B. Reporting Chemical Releases: Any significant chemical release must be reported to the Regulatory agencies as required per CAC Title 19. Refer to the County of San Diego, Department of Environmental Health, Hazardous Materials Management Division website for assessment and reporting information.

1.4 SITE SECURITY

- A. CMAR shall maintain site security as needed.
- B. Except for governmental inspectors having jurisdiction, no visitors shall be allowed in any work areas, except as authorized by the RESIDENT ENGINEER.

1.5 HOUSEKEEPING

- A. The CMAR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees.
- B. At the end of each day, all contaminated soil shall be maintained as specified in Section 1.2, Item C. All hazardous wastes, other than stockpiled soil generated, must be in sealed and properly labeled hazardous waste containers. All hazardous wastes must be removed from site within 90 days of collection or at the end of the project, whichever comes first.
- C. When Work is complete in a given Work area, the CMAR shall notify RESIDENT ENGINEER. The SUB-ENVIRONMENTAL CONTRACTOR shall perform a visual inspection and confirmation sampling, when necessary. The SUB-ENVIRONMENTAL CONTRACTOR shall certify, in writing, that the Work is complete and that there are no visible accumulations of hazardous material or hazardous wastes present. CMAR shall not remove Work area enclosures and caution signs prior to receipt of the SUB-ENVIRONMENTAL CONTRACTOR's certification.
- D. Procedure for Storage and Disposal of Hazardous Waste: Store hazardous waste containers in the Work area or in designated staging areas until cleanup is complete. Do not remove any hazardous waste from the site without approval from the RESIDENT ENGINEER. RESIDENT ENGINEER shall sign all hazardous waste manifests. At the RESIDENT ENGINEER's discretion, the SUB-ENVIRONMENTAL CONTRACTOR, on a case by case basis, may be authorized to sign a hazardous waste manifest.

1.6 FIELD QUALITY CONTROL

- A. The SUB-ENVIRONMENTAL CONTRACTOR will observe the CMAR's Work and will conduct final inspections and confirmation sampling as required per the closure letter, MWP Addendum No. 4 or as designated by regulatory agencies.
- B. The RESIDENT ENGINEER reserves the right to direct work stoppage at the project site if the RESIDENT ENGINEER determines that unacceptable levels of hazardous material or hazardous wastes are being emitted or released. Any costs resulting from such work stoppage shall be borne by the CMAR.
- C. The CMAR will propose the use of certain landfills/treatment facilities and the RESIDENT ENGINEER will either approve or disapprove the selections. Once a sufficient selection of disposal facilities are agreed upon during the submittal process, the SUB-ENVIRONMENTAL CONTRACTOR will contact them to understand their requirements for waste profiles and design the sampling and characterization protocol around their requirements.
SUB-ENVIRONMENTAL CONTRACTOR is responsible for performing waste profiling tests and obtaining disposal facility (TSDF) approval and acceptance from the pre-approved disposal locations. CMAR shall provide profile test results and TSDF profile acceptance documentation to RESIDENT ENGINEER for approval prior to offsite transportation of any hazardous wastes. The CMAR shall coordinate with the SUB-ENVIRONMENTAL CONTRACTOR to obtain all necessary authorizations for this disposal.
The SUB-ENVIRONMENTAL CONTRACTOR will coordinate with Class III landfills to obtain non-hazardous waste requirements. The SUB-ENVIRONMENTAL CONTRACTOR will provide the approval information to the CMAR who would then be responsible for coordinating the transportation and disposal of the non-hazardous waste.

1.7 CONTAMINATED SOIL REMOVAL/REMEDICATION

- A. Contaminated soils are defined as soils that are not considered to be "clean" as defined by the following definition:
Clean soil is soil that is not known or reasonably suspected to contain concentrations of toxic metal above anthropogenic background concentrations or detectable concentrations (as defined by standard EPA analytical methods) of contaminants from a release of hazardous substances, and is not reasonably expected to generate a leachate, under natural conditions, that contains contaminants in excess of water quality objectives.

In addition, clean soil shall not have a total lead concentration greater than 15 mg/kg as determined by the Regional Water Quality Control Board by using EPA's SW-846 statistical analysis with an upper 80 percent confidence level.

Soils meeting these criteria are considered to be clean and can be reused on-Site or off-Site. Please note that the DEH previously stated in their February 8, 2000 letter, that they recommend that soil exported from the Site be used at properties with commercial or industrial land uses.

Soil that does not meet these criteria is considered to be a regulated waste and therefore requires waste classification prior to transportation and disposal/reuse.

The anticipated contamination levels and expected remediation quantities are shown in the Property Closure Report.

Three main classes of soil as follows:

- Lead-bearing soil
- Furan and Dioxin bearing soil
- Non-hazardous/non-regulated soil

Additional releases of hazardous substances may be encountered that are currently not known. Refer to the Property Closure report for a description of the known and suspected releases of hazardous substances at the site.

When soil suspected to be contaminated is encountered by CMAR and the SUB-ENVIRONMENTAL CONTRACTOR is not present, CMAR must immediately cease work in the area and contact the SUB-ENVIRONMENTAL CONTRACTOR. The SUB-ENVIRONMENTAL CONTRACTOR will collect all necessary soil samples and send them to a California certified hazardous waste testing laboratory for the appropriate analyses.

- C. The CMAR is responsible to manage the contaminated and-non contaminated soil properly and per the approved PLAN. The OWNER shall not be liable for contaminated soil improperly handled or disposed by the CMAR.
- D. The CMAR bears the ultimate responsibility for the health and safety of its employees. These specifications shall not be construed to limit the CMAR's liability associated with site safety considerations.

1.8 MEASUREMENT AND PAYMENT

The Price defined in GMP should include price bid per ton for the type of material to be removed and disposed, as referenced in Section 1.7, paragraph A, above, includes all costs for labor, materials, testing, sampling, equipment, tools, rental equipment, personnel protective equipment, transportation, disposal costs (hazardous waste and non-hazardous waste), and all other items necessary to complete the Work.

****END OF SECTION****

1.9ARCHAEOLOGICAL MITIGATION:

The City of San Diego Environmental Analysis Section (EAS) of the Development Services Department (DSD) has prepared Mitigated Negative Declaration (MND) No. 41-0980 and Addendum No. 41-0980-A to the MND for the Main Library. It is available from the City for the Contractor's Information. If a discovery is made of items of archaeological interest, the contractor shall immediately cease excavation in the area of the discovery and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. When further work is resumed, excavation operations shall be coordinated between the City and the Archeologist.

The Contractor shall be entitled to an extension of time and compensation in accordance with the defined extra work procedure. The Contractor shall make allowances for temporary work stoppages to evaluate and/or salvage archaeological (pre-historic or historic cultural material) discoveries. Work stoppages may be for a minimum of one (1) hour to a maximum of five (5) days. If suspension of construction activities for analysis and/or salvaging of resources exceed five (5) days, the Contractor shall be entitled to an extension of time in accordance with the provisions of Owner's Contingency

ARCHAEOLOGICAL MONITORING PROGRAM:

The Contractor shall retain a qualified archaeologist, approved by EAS, who shall attend the preconstruction meeting, to implement the archaeological monitoring program. For further provisions, see the Mitigation, Monitoring and Reporting Program (MMRP) outlined in Section V of the MND. The archaeologist retained by the Contractor must only use field personnel at the site that have had 40-hour OSHA hazwopper training and are current with their annual 8-hour hazwoper updates and have current documentation certifying completion of the training.

Full compensation for furnishing all archaeological monitoring program and report preparation, as prescribed in Appendix "A", shall be included in the GMP for Archaeological Monitoring Program. However, in the event of a significant discovery, the Contractor shall be entitled to additional compensation in accordance with the provisions of Owner's Contingency

ARCHAEOLOGICAL DISCOVERY

In the event of a significant archaeological discovery (non-human remains), , the contractor shall comply with subsection B of the MMRP, "Discovery Notification Process" and subsection C, "Determination of Significance" under Archaeological Resources. In accordance with the Mitigation and Monitoring Reporting Program, sorting, cleaning, cataloging/identifying/analyzing, curation (bagging, placement into archival boxes, delivery to an appropriate institution and any fees required by the institution), and reporting, of artifact remains. All costs for mitigation shall be paid from the amount allocated for Archaeological Mitigation and Curation. The Contractor shall provide the Resident Engineer with invoices for the work performed and be reimbursed from the amount allocated. All costs exceeding the amount allocated shall be paid for as Extra Work, in accordance with section 3-3.

All costs for excavation up to 10 feet deep, by the Contractor, of areas outside of the remediation limits for further recovery of artifacts shall be included in the bid item for Archaeological Mitigation Excavation and be paid for on a cubic yard basis. This shall include all costs for coordination of all parties involved for a period of up to two weeks. Any costs incurred beyond a two week period shall be paid for as Extra Work, in accordance with section 3-3.

II. HISTORICAL RESOURCES (ARCHAEOLOGY-MONITORING)

I. Prior to Permit Issuance

A. Entitlements Plan Check

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coast Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the ¼ mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur

- a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
- b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor(s) Shall be Present During Grading/Excavation/Trenching

1. The Archaeological Monitor shall be present full-time during grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
2. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI and Native American monitor shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. Discovery of Human Remains

If human remains are discovered, work shall halt in that area and the following procedures as set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

A. Notification

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenience of the remains.
2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenience.
3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains **ARE** determined to be Native American

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with the California Public Resource and Health & Safety Codes.
4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
5. Disposition of Native American Human Remains shall be determined between the MLD and the PI, IF:
 - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
 - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner.
 - c. In order to protect these sites, the Landowner shall do one or more of the following:
 - (1) Record the site with the NAHC;
 - (2) Record an open space or conservation easement on the site;
 - (3) Record a document with the County.
 - d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with

appropriate dignity, pursuant to Section 5.c., above.

- D. If Human Remains are **NOT** Native American
 - 1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
 - 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
 - 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner and the Museum of Man.

V. Night and/or Weekend Work

- A. If night and/or weekend work is included in the contract
 - 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
 - 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVr and submit to MMC via fax by 8AM of the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction
 - 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 - 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

- A. Preparation and Submittal of Draft Monitoring Report
 - 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
 - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with State of California Department of Parks and Recreation
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during

- the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
 4. MMC shall provide written verification to the PI of the approved report.
 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Artifacts
1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
 2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
 3. The cost for curation is the responsibility of the property owner.
- C. Curation of artifacts: Accession Agreement and Acceptance Verification
1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

PALEONTOLOGICAL MITIGATION:

The City of San Diego Environmental Analysis Section (EAS) of the Development Services Department (DSD) has prepared Mitigated Negative Declaration (MND) No. 41-0980 and Addendum No. 41-0980-A to the MND for the Main Library. It is available from the City for the Contractor's Information. If a discovery is made of items of paleontological interest, the contractor shall immediately cease excavation in the area of the discovery and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. The Contractor shall retain a qualified paleontologist, approved by EAS, who shall attend the preconstruction meeting, to implement the Paleontological Monitoring Program. For further provisions see Paleontological Resources in Section V of the MND.

Full compensation for furnishing all paleontological monitoring program and report preparation, as prescribed in Appendix "A", shall be included in the Contract bid item for Paleontological Monitoring Program. However, in the event of a significant discovery, the Contractor shall be entitled to additional compensation in accordance with the provisions of Owner's Contingency.

1.10 PALEONTOLOGICAL DISCOVERY:

If discovery is made of items of paleontological interest, the contractor shall immediately cease excavation in areas of the discovery and shall not continue until approved by City and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. When further work is resumed, excavation operations shall be coordinated between City and the Paleontologist.

In the event of a significant paleontological discovery and after consultation with EAS LDR staff, the Contractor shall comply with subsection B of the MMRP, "Discovery Notification Process" and subsection C, "Determination of Significance" under Paleontological Resources. In accordance with the Mitigation and Monitoring Reporting Program, the mitigation shall include but not be limited to recovery, sorting, cleaning, cataloging/identifying/analyzing, curation (bagging, placement into archival boxes, delivery to an appropriate institution, and any fees required by the institution), and reporting of fossil remains. All costs for mitigation shall be paid from the amount allocated for Paleontological Mitigation and Curation. The Contractor shall provide the Resident Engineer with invoices for the work performed and be reimbursed from the amount allocated. All costs exceeding the amount allocated shall be paid for as Owner's Contingency.

All costs for excavation by the Contractor, of areas outside of the remediation limits for further recovery of fossils shall be included in the bid time for Paleontological Mitigation Excavation and be paid for on a cubic yard basis. This shall include all costs for coordination of all parties involved and traffic control and/or steel plating for a period of up to two weeks. Any costs incurred for additional traffic control and/or steel plating beyond a two week period shall be paid for By Owner's Contingency.

PALEONTOLOGICAL RESOURCES

I. Prior to Permit Issuance

Letters of Qualification have been submitted to City of San Diego

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or

during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
2. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
 - b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.

- d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night Work

- A. If night work is included in the contract
 1. When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night work, The PI shall record the information on the CSVr and submit to MMC via fax by 9am the following morning, if possible.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night work becomes necessary during the course of construction
 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

- A. Submittal of Draft Monitoring Report
 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
 - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with the San Diego Natural History Museum
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
 2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.

4. MMC shall provide written verification to the PI of the approved report.
 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Fossil Remains
1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
 2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate
- C. Curation of fossil remains: Deed of Gift and Acceptance Verification
1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

EXHIBIT R - ARCHEOLOGICAL AND PALEONTOLOGICAL MONITORING

1.9 ARCHAEOLOGICAL MITIGATION:

The City of San Diego Environmental Analysis Section (EAS) of the Development Services Department (DSD) has prepared Mitigated Negative Declaration (MND) No. 41-0980 and Addendum No. 41-0980-A to the MND for the Main Library. It is available from the City for the Contractor's Information. If a discovery is made of items of archaeological interest, the contractor shall immediately cease excavation in the area of the discovery and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. When further work is resumed, excavation operations shall be coordinated between the City and the Archeologist.

The Contractor shall be entitled to an extension of time and compensation in accordance with the defined extra work procedure. The Contractor shall make allowances for temporary work stoppages to evaluate and/or salvage archaeological (pre-historic or historic cultural material) discoveries. Work stoppages may be for a minimum of one (1) hour to a maximum of five (5) days. If suspension of construction activities for analysis and/or salvaging of resources exceed five (5) days, the Contractor shall be entitled to an extension of time in accordance with the provisions of Owner's Contingency

ARCHAEOLOGICAL MONITORING PROGRAM:

The Contractor shall retain a qualified archaeologist, approved by EAS, who shall attend the preconstruction meeting, to implement the archaeological monitoring program. For further provisions, see the Mitigation, Monitoring and Reporting Program (MMRP) outlined in Section V of the MND. The archaeologist retained by the Contractor must only use field personnel at the site that have had 40-hour OSHA hazwopper training and are current with their annual 8-hour hazwoper updates and have current documentation certifying completion of the training.

Full compensation for furnishing all archaeological monitoring program and report preparation, as prescribed in Appendix "A", shall be included in the GMP for Archaeological Monitoring Program. However, in the event of a significant discovery, the Contractor shall be entitled to additional compensation in accordance with the provisions of Owner's Contingency

ARCHAEOLOGICAL DISCOVERY

In the event of a significant archaeological discovery (non-human remains), the contractor shall comply with subsection B of the MMRP, "Discovery Notification Process" and subsection C, "Determination of Significance" under Archaeological Resources. In accordance with the Mitigation and Monitoring Reporting Program, sorting, cleaning, cataloging/identifying/analyzing, curation (bagging, placement into archival boxes, delivery to an appropriate institution and any fees required by the institution), and reporting, of artifact remains. All costs for mitigation shall be paid from the amount allocated for Archaeological Mitigation and Curation. The Contractor shall provide the Resident Engineer with invoices for the work performed and be reimbursed from the amount allocated. All costs exceeding the amount allocated shall be paid for as Extra Work, in accordance with section 3-3.

All costs for excavation up to 10 feet deep, by the Contractor, of areas outside of the remediation limits for further recovery of artifacts shall be included in the bid item for Archaeological Mitigation Excavation and be paid for on a cubic yard basis. This shall

include all costs for coordination of all parties involved for a period of up to two weeks. Any costs incurred beyond a two week period shall be paid for as Extra Work, in accordance with section 3-3.

II. HISTORICAL RESOURCES (ARCHAEOLOGY-MONITORING)

I. Prior to Permit Issuance

A. Entitlements Plan Check

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coast Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the 1/4 mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit an

Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor(s) Shall be Present During Grading/Excavation/Trenching

1. The Archaeological Monitor shall be present full-time during grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
2. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI and Native American monitor shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground

- disturbing activities in the area of discovery will be allowed to resume.
- c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. **Discovery of Human Remains**

If human remains are discovered, work shall halt in that area and the following procedures as set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

A. Notification

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenience of the remains.
2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenience.
3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains **ARE** determined to be Native American

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with the California Public Resource and Health & Safety Codes.
4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
5. Disposition of Native American Human Remains shall be determined between the MLD and the PI, IF:
 - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
 - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner.
 - c. In order to protect these sites, the Landowner shall do one or more of the following:
 - (1) Record the site with the NAHC;
 - (2) Record an open space or conservation easement on the site;
 - (3) Record a document with the County.
 - d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may

agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.

- D. If Human Remains are **NOT** Native American
1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner and the Museum of Man.

V. Night and/or Weekend Work

- A. If night and/or weekend work is included in the contract
1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSV and submit to MMC via fax by 8AM of the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV - Discovery of Human Remains.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction
1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

- A. Preparation and Submittal of Draft Monitoring Report
1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
 - a. For significant archaeological resources encountered during

monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.

b. Recording Sites with State of California Department of Parks and Recreation

The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Artifacts

1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
3. The cost for curation is the responsibility of the property owner.

C. Curation of artifacts: Accession Agreement and Acceptance Verification

1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

D. Final Monitoring Report(s)

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

PALEONTOLOGICAL MITIGATION:

The City of San Diego Environmental Analysis Section (EAS) of the Development Services Department (DSD) has prepared Mitigated Negative Declaration (MND) No. 41-0980 and Addendum No. 41-0980-A to the MND for the Main Library. It is available from the City for the Contractor's Information. If a discovery is made of items of paleontological interest, the contractor shall immediately cease excavation in the area of the discovery and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. The Contractor shall retain a qualified paleontologist, approved by EAS, who shall attend the preconstruction meeting, to implement the Paleontological Monitoring Program. For further provisions see Paleontological Resources in Section V of the MND.

Full compensation for furnishing all paleontological monitoring program and report preparation, as prescribed in Appendix "A", shall be included in the Contract bid item for Paleontological Monitoring Program. However, in the event of a significant discovery, the Contractor shall be entitled to additional compensation in accordance with the provisions of Owner's Contingency.

1.10 PALEONTOLOGICAL DISCOVERY:

If discovery is made of items of paleontological interest, the contractor shall immediately cease excavation in areas of the discovery and shall not continue until approved by City and shall comply with the mitigation requirements outlined in Section V of the MND for the handling and curation process of any discovered resources. When further work is resumed, excavation operations shall be coordinated between City and the Paleontologist.

In the event of a significant paleontological discovery and after consultation with EAS LDR staff, the Contractor shall comply with subsection B of the MMRP, "Discovery Notification Process" and subsection C, "Determination of Significance" under Paleontological Resources. In accordance with the Mitigation and Monitoring Reporting Program, the mitigation shall include but not be limited to recovery, sorting, cleaning, cataloging/identifying/analyzing, curation (bagging, placement into archival boxes, delivery to an appropriate institution, and any fees required by the institution), and reporting of fossil remains. All costs for mitigation shall be paid from the amount allocated for Paleontological Mitigation and Curation. The Contractor shall provide the Resident Engineer with invoices for the work performed and be reimbursed from the amount allocated. All costs exceeding the amount allocated shall be paid for as Owner's Contingency.

All costs for excavation by the Contractor, of areas outside of the remediation limits for further recovery of fossils shall be included in the bid time for Paleontological Mitigation Excavation and be paid for on a cubic yard basis. This shall include all costs for coordination of all parties involved and traffic control and/or steel plating for a period of up to two weeks. Any costs incurred for additional traffic control and/or steel plating beyond a two week period shall be paid for By Owner's Contingency.

PALEONTOLOGICAL RESOURCES

I. Prior to Permit Issuance

Letters of Qualification have been submitted to City of San Diego

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or

during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
2. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
 - b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.

- d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night Work

- A. If night work is included in the contract
 1. When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night work, The PI shall record the information on the CSV and submit to MMC via fax by 9am the following morning, if possible.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night work becomes necessary during the course of construction
 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

- A. Submittal of Draft Monitoring Report
 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
 - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with the San Diego Natural History Museum
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
 2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.

4. MMC shall provide written verification to the PI of the approved report.
 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Fossil Remains
1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
 2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate
- C. Curation of fossil remains: Deed of Gift and Acceptance Verification
1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

OFFICIAL BUSINESS

Document entitled to free recording
Per Government Code Section 6103 and 27383

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The Redevelopment Agency of the
City of San Diego
c/o Centre City Development Corporation
401 B Street, Suite 400
San Diego, California 92101
Attention: Executive Vice President and Chief Financial Officer

**COOPERATION AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
AND
THE CITY OF SAN DIEGO
FOR THE CONSTRUCTION AND USE OF
THE NEW CENTRAL LIBRARY**

This Cooperation Agreement for the Construction and Use of the New Central Library (“**Agreement**”) is made and entered into by and between the Redevelopment Agency of the City of San Diego, a public body corporate and politic (“**Agency**”), and the City of San Diego, a California municipal corporation (“**City**”), referred to herein individually as “**Party**” and collectively as “**Parties**”, with reference to the following:

RECITALS

A. The Agency is authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law of the State of California, including the power to issue bonds, notes and other obligations for any of its corporate purposes.

B. The Agency is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Centre City Redevelopment Project Area (“**Project Area**”).

C. In order to carry out and implement the Redevelopment Plan, the Agency approved, as a combined document, the Implementation Plans for the Centre City and Horton Plaza Redevelopment Project Areas for the period of July 2009 to June 2014.

D. The Redevelopment Plan contemplates that the Agency will issue its bonds or other obligations to finance the cost of certain redevelopment activities; and, in this regard, the Agency did issue the Centre City Tax Allocation Bonds, Series 2004 A for redevelopment activities.

E. The Centre City Development Corporation, Inc. ("**CCDC**") is authorized, on behalf of the Agency, to administer the Project Area and implement redevelopment projects therein.

F. The City intends to construct the New Central Library to serve the Project Area ("**Project**") to be located on the block bounded by 11th Avenue, J Street on the north and Park Boulevard to the south, as more particularly described in the legal description attached hereto as Exhibit A, and related improvements within the Project Area ("**Project Site**").

G. The City proposes to enter into that certain Construction Manager At Risk Construction Services Agreement with Turner Construction Company for the construction of the Project ("**Construction Contract**") and that certain Eighth Amendment to Agreement with a Joint Venture with Rob Wellington Quigley Architects, Inc. and Tucker Sadler Architects, Inc. ("**Design Contract**").

H. Pursuant to Agency Resolution No. R-03893 dated April 19, 2005 and City Resolution No. R-300358 dated April 19, 2005 (incorrectly numbered on the City Resolution as R-3003358), the Agency approved up to Eighty Million Dollars (\$80,000,000) of tax increment from the Project Area to assist with the funding of a portion of the construction costs of the Project.

I. Pursuant to Agency Resolution No. R-2489 dated May 2, 1995 and Resolution No. R-03894 dated April 19, 2005, the Agency approved the expenditure of up to Sixteen Million Five Hundred Thousand Dollars (\$16,500,000) of Agency funds previously committed for the Project.

J. Pursuant to Agency Resolution No. R-04454 dated November 12, 2009, the Agency approved the expenditure of up to Five Hundred Seventy Thousand Dollars (\$570,000) of Agency funds previously committed for the Project.

K. The City has now requested that the Agency approve an expenditure of the remaining Agency funds allocated toward the Project in an amount not to exceed Sixty Two Million Nine Hundred Thirty Thousand Dollars (\$62,930,000) to be applied toward construction and related costs for the Project.

L. The Agency proposes to use approximately Forty Two Million Dollars (\$42,000,000) of tax increment funds from the Project Area ("**Tax Increment Funds**") and approximately Twenty Million Nine Hundred Thirty Thousand Dollars (\$20,930,000) of proceeds from the Centre City Tax Allocation Bonds, Series 2004 A bond issuance ("**Bond Proceeds**") to fund the remaining expenditure requested by the City upon satisfaction of the contingency set forth below.

M. It is contemplated that the costs of construction to be paid from Tax Increment Funds and Bond Proceeds in connection with the Project be limited to hard (capital) costs and third party consultant services and specifically exclude employee or contractual services of the City.

N. In order to ensure compliance with the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith (the "**Code**") and to ensure proper use of the

Agency funds, the Agency desires to monitor the use of the Tax Increment Funds and the Bond Proceeds as they are used by the City to finance the Project.

NOW, THEREFORE, in consideration of these recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Agency agree as follows:

AGREEMENT

ARTICLE I

PROJECT IMPROVEMENTS

1.1 Construction of Project Improvements. The City is responsible for construction of the Project in accordance with the terms and conditions of the Construction Contract, which Construction Contract is subject to approval by the Mayor of the City of San Diego and the San Diego City Council.

1.2 Maintenance of Project Improvements. The City is responsible for maintenance of the Project improvements after they have been successfully completed.

1.3 Approval of Project Improvements. The Agency and the City will cooperate in securing any approvals from state or federal agencies necessary to implement the Project.

ARTICLE II

COSTS OF PROJECT IMPROVEMENTS AND DISBURSEMENT OF AGENCY FUNDS

2.1 Construction Costs. The Agency will assist the City in funding a portion of the total costs of construction of the Project by disbursing the Tax Increment Funds and the Bond Proceeds to the City for its use in the construction of the Project in accordance with this Agreement. The Tax Increment Funds and the Bond Proceeds shall only be applied by the City toward: (a) the costs of construction of the Project; and (b) third party consultant services related to the Project. The Tax Increment Funds and the Bond Proceeds shall not be applied by the City toward: (x) employee or contractual services of the City; or (y) the construction costs of that certain charter school that will occupy a portion of the Project Site. The City shall be fully responsible for the direct payment of all costs associated with the construction of the Project, without any obligation or liability of the Agency whatsoever.

2.2 Maintenance Costs. The City is responsible for the maintenance of the Project. Neither the Tax Increment Funds nor the Bond Proceeds may be applied toward any costs associated with the maintenance of the Project.

2.3 Disbursement of Agency Funds. Provided the Mayor of the City of San Diego and the San Diego City Council approve the Construction Contract and once the Construction Contract is fully executed by all parties thereto, the Agency shall transfer the Tax Increment Funds to the CC Contribution to City of San Diego, Fund No. 200633, and the Bond Proceeds to the Capital

Improvement Program Budget, WBS No. S-00799 New Central Library, Fund No. 200629 CC Contribution to City of San Diego – TE 2004A in one lump sum upon the effective date of this Agreement as provided for in Article IV below. Any and all interest accrued on the Tax Increment Funds and the Bond Proceeds shall be due and payable to the Agency on a quarterly basis.

2.4 Return of Agency Funds. If, for any reason, the Project is not completed pursuant to the terms and conditions of the Construction Contract, the City shall be obligated to return any and all unused Tax Increment Funds and Bond Proceeds and any and all interest accrued thereon within 30 calendar days following Agency's request therefor.

ARTICLE III

MONITORING

3.1 Operation of the Project. The City hereby covenants that the payment of not more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bond Proceeds during the term thereof is or will be, under the terms of the Bond Proceeds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use (as defined below) or in payments in respect of property used or to be used for a Private Business Use, or is or will be derived from payments, whether or not to the Agency, in respect of property or borrowed money used or to be used for a Private Business Use. "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person (including a non-profit organization), excluding, however, use by a governmental unit and use by a nongovernmental unit as a member of the general public.

In addition, the City hereby covenants that not in excess of five percent (5%) of the Net Proceeds (as defined below) of the Bond Proceeds will be used, directly or indirectly, to make or finance a loan (other than loans constituting non-purpose obligations, as defined in the Code) to persons other than state or local government units. "Net Proceeds," when used with reference to the Bond Proceeds, means the face amount of the Bond Proceeds, plus accrued interest and premium if any, less original issue discount.

3.2 Compliance with the Code. The City hereby covenants to take any and all action, and to refrain from taking any action, which is necessary in order to comply with the Code in order to maintain the exclusion from gross income for federal income tax purposes pursuant to Section 103 of the Code of the interest on the Bond Proceeds paid by the Agency and received by the owners thereof.

3.3 No Arbitrage Bonds. The City hereby covenants that it shall not make or permit any use of the Project that may cause the Bond Proceeds to be "arbitrage bonds" within the meaning of Section 148 of the Code. In calculating such use, the City may allocate use based on the share of the cost of the Project financed with tax-exempt obligations and the share financed by other sources of funds.

3.4 Obligation to Provide Financial Information. The City hereby covenants to provide the Agency with such information as the Agency shall reasonably request in order to allow the Agency to calculate, or cause to be calculated, amounts relating to the Bond Proceeds required to be rebated to the United States, at such times and in such manner as may be required pursuant to the Centre City Tax Allocation Bonds, Series 2004 A Trust Indenture. The Agency shall inform the City how frequently such information is to be provided, and the City shall provide such information in a timely manner. The City shall keep, and retain for a period of six (6) years following the retirement of the Bond Proceeds, records of the determinations made pursuant to this Section.

3.5 Accounting Records and Financial Statements. The City shall at all times keep, or cause to be kept, proper books of record and accounts, prepared in accordance with industry standards, in which complete and accurate entries shall be made of (i) all transactions relating to the expenditure of funds on the Project; (ii) all transactions relating to the expenditure of the Tax Increment Funds; and (iii) all transactions related to the expenditure of the Bond Proceeds. Such books of record and account shall be available for inspection by the Agency or CCDC at reasonable hours, upon reasonable notice and under reasonable circumstances. The City shall furnish to CCDC, on behalf of the Agency, at least monthly, an accounting of all transactions relating to the Tax Increment Funds and the Bond Proceeds in a form acceptable to CCDC, on behalf of the Agency, in CCDC's sole discretion. The City shall also furnish to CCDC, on behalf of the Agency, all invoices related to the expenditure of the Tax Increment Funds and the Bond Proceeds as may be requested by CCDC, on behalf of the Agency.

ARTICLE IV

TERM

4.1 Term. This Agreement shall become effective on the date it is fully executed by both Parties and the contingency in section 4.2 below has been satisfied. This Agreement shall expire on the date that the Bond Proceeds, and any obligations issued by the Agency to refund the Bond Proceeds, are no longer outstanding.

4.2 Contingency. This Agreement shall not become effective until, and is expressly contingent upon, approval of the Construction Contract and the Design Contract by the Mayor of the City of San Diego and the San Diego City Council.

ARTICLE V

GENERAL PROVISIONS

5.1 Agency's Representative. The Agency's obligations under this Agreement will be performed by CCDC, at the Agency's discretion. The City will recognize CCDC as the Agency's representative for purposes of this Agreement.

5.2 Third Party Beneficiaries. This Agreement is solely for the benefit of the Agency and the City, and no third person or entity shall be deemed to have any rights or remedies herein.

Any provision of this Agreement that appears to vest any right of action in third parties is unintended, and any such third party beneficiary is hereby expressly disclaimed.

5.3 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

5.4 Integration and Modification. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

5.5 Conflict Between Terms. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency between this Agreement and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

5.6 Non-Liability of Agency and City Officials and Employees. No member, official, officer, employee or consultant of either Party shall be personally liable to the other Party or any successor in interest thereto, in the event of any default or breach by the Agency or by the City or for any amount which may become due to the City or any successor in interest thereto, or on any obligations under the terms of this Agreement.

5.7 No Joint and Several Liability. The Parties acknowledge and agree that as stated in Government Code Section 895, this Agreement is an agreement between public entities designed to implement the disbursement or subvention of public funds from one entity to the other and, as such, is not subject to the joint and several liability provisions of Government Code Sections 895 to 895.8.

5.8 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, and by the Redevelopment Agency of the City of San Diego, acting by and through its Executive Director or designee.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

CITY OF SAN DIEGO

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality
of the forgoing agreement this _____ day of
_____, 2010.

I HEREBY APPROVE the form and legality
of the forgoing agreement this _____ day of
_____, 2010.

JAN I. GOLDSMITH, General Counsel

JAN I. GOLDSMITH, City Attorney

By: _____
Deputy General Counsel

By: _____
Deputy City Attorney

State of California)
County of _____)

On _____ before me, _____,
a Notary Public, personally appeared _____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____,
a Notary Public, personally appeared _____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property located in the County of San Diego, State of California, described as follows:

BEING ALL THAT PORTION OF LOTS 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K' AND 'L' IN BLOCK 128, AND A PORTION OF LOTS 'A' AND 'L' IN BLOCK 133 OF HORTON'S ADDITION IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, TOGETHER WITH THAT PORTION OF 'K' STREET AS DEDICATED TO PUBLIC USE.

BEGINNING AT THE NORTHWEST CORNER OF LOT 'A' OF BLOCK 128, THENCE ALONG THE NORTH LINE OF SAID BLOCK 128, SOUTH 89°51'55" EAST, 200.34 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 128; THENCE ALONG THE EAST LINE OF SAID BLOCK 128, SOUTH 00°06'39" WEST, 199.21 FEET TO THE BEGINNING OF A TANGENT, 71.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE LEAVING THE EAST LINE OF SAID BLOCK 128, SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°39'37", AN ARC DISTANCE OF 64.02 FEET TO THE BEGINNING OF A 114.00 FOOT RADIUS REVERSE CURVE; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°27'36", AN ARC DISTANCE OF 106.37 FEET TO THE BEGINNING OF A 90.62 FOOT RADIUS REVERSE CURVE; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 61°09'37", AN ARC DISTANCE OF 96.73 FEET TO A POINT, A RADIAL TO WHICH BEARS SOUTH 30°31'43" EAST; THENCE NORTH 44°34'07" WEST, 9.65 FEET; THENCE NORTH 89°51'47" WEST, 15.92 FEET TO THE BEGINNING OF A NON- TANGENT 266.33 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL TO WHICH BEARS SOUTH 47°47'54" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°46'29", AN ARC DISTANCE OF 138.40 FEET TO A POINT, A RADIAL TO WHICH BEARS SOUTH 77°34'23" WEST; THENCE NONTANGENT TO SAID 266.33 FOOT RADIUS CURVE, NORTH 00°06'25" EAST, 300.45 FEET TO THE POINT OF BEGINNING.

APN: 535-363-08

DRAFT

**EIGHTH AMENDMENT TO
THE AGREEMENT FOR PROFESSIONAL SERVICES
FOR THE SAN DIEGO NEW CENTRAL LIBRARY**

This Eighth Amendment to the Agreement is entered into by and between the City of San Diego, a municipal corporation (City) and the Joint Venture of Rob Wellington Quigley Architects and Tucker Sadler Architects (Consultant).

RECITALS

- A. On October 2, 2000, the City and Rob Wellington Quigley entered into an Agreement to provide Professional Services for the San Diego New Main Library, on file in the Office of the City Clerk as Document No. C-10303.
- B. On October 17, 2000, the City and Rob Wellington Quigley entered into a First Amendment to the Agreement, on file in the Office of the City Clerk as Document No. RR-293901.
- C. On August 29, 2001, the City and the Consultant entered into a Second Amendment to the Agreement, on file in the Office of the City Clerk as Document No. RR-295221-1, assigning the Agreement to the Joint Venture.
- D. The City and the Consultant subsequently entered into Third, Fourth, Fifth, Sixth and Seventh Amendments, on file in the Office of the City Clerk as Document Nos. RR-297351-1, RR-298285-1, RR-299560-1, RR-300359, and OO-19908, respectively, changing the Scope of Services and extending the duration of the Agreement.
- E. The Sixth Amendment consolidated the Scope of Services from the original Agreement and all prior amendments and exhibits into Exhibit A-5.
- F. The Seventh Amendment added Professional Services during the bidding phase of the project, described in the Scope of Services in Exhibit A-6.
- G. Tucker Sadler Noble Castro Architects has changed the name of its firm to Tucker Sadler Architects.
- H. The City and the Consultant desire to extend the term of the Agreement and to amend the Scope of Services to provide Professional Services during construction of the San Diego New Central Library (formerly the San Diego New Main Library) project.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Eighth Amendment, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

EIGHTH AMENDMENT

1. The Scope of Services described in Section 1.1 of the Agreement is amended to read:

1.1 Scope of Services.

The Consultant shall perform the Professional Services set forth in the Scope of Services in Exhibits A-5 and A-6, in accordance with their respective compensation schedules, fee schedules, and time schedules in the Agreement and any amendments. The Consultant shall also perform the Professional Services described in the attached Exhibit A-7 at the direction of the City on a lump sum basis in accordance with the attached Compensation Schedule in Exhibit B-7 and Fee Schedule in Exhibit C-7. The compensation for this Eighth Amendment shall not exceed \$5,521,003, comprised of a \$4,945,118.00 as described in Exhibit B-7 plus \$575,885.00 as Additional Services. The total compensation to Consultant under this Agreement and all amendments shall not exceed \$15,047,672.00.

2. The term described in Section 2.1 of the Agreement is amended to read:

2.1 Term of Agreement.

This Agreement as amended shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective until completion of the Scope of Services or September 30, 2014, whichever occurs first. Any extension of time shall be in the form of an amendment to the Agreement approved by Ordinance of the City Council.

3. The compensation described in Section 3.1 of the Agreement is amended to read:

3.1 General.

The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Agreement as amended, in a total amount not to exceed \$15,047,672.00, as set forth in the Compensation Schedules in Exhibits B through B-7 and the Fee Schedules in Exhibits C through C-7. The compensation for this Eighth Amendment shall not exceed \$5,521,003.00, comprised of a \$4,945,118.00 as described in Exhibit B-7 plus \$573,885.00 as Additional Services. For the Scope of Services in Exhibit A-7, the Consultant shall not be entitled to fees which exceed the amounts in the Compensation Schedule in Exhibit B-7 and Fee Schedule in Exhibit C-7.

4. The additional services described in Section 3.3 of the Agreement is amended to read:

3.3 Additional Services.

If the City requires additional Professional Services (Additional Services) beyond the Scope of Services, except for additional costs as described in Section 3.4 of this

Agreement, the Consultant will be paid an additional fee. For Additional Services, if required, a maximum fee of \$1,564,744.00 may be paid, comprised of \$990,859.00 previously authorized and \$573,885.00 added by this amendment. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.

5. The Scope of Services in Exhibit A-7, the Compensation Schedule in Exhibit B-7, and the Fee Schedule in Exhibit C-7 are hereby incorporated into this amendment by reference.

6. All references in the Agreement and its amendments to the Joint Venture of Rob Wellington Quigley Architects and Tucker Sadler Noble Castro Architects shall be construed and interpreted as meaning the Joint Venture of Rob Wellington Quigley Architects and Tucker Sadler Architects.

7. This Eighth Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement and prior amendments shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to Ordinance No. O-_____ authorizing such execution, and by the Consultant through its duly authorized officers.

ROB WELLINGTON QUIGLEY ARCHITECTS, INC.

By: _____

Name: _____

Date: _____

TUCKER SADLER ARCHITECTS, INC.

By: _____

Name: _____

Date: _____

CITY OF SAN DIEGO

By: _____

Name: _____

Date: _____

I HEREBY APPROVE the form and legality of the forgoing amendment this _____ day of _____, 2010.

JAN I. GOLDSMITH, City Attorney

By: _____
Deputy City Attorney

Exhibit A-7

Professional Services

Construction Administration Phase Scope

- Attend pre-construction meetings.
- Attend scheduled CM/City/Library/Architect meetings.
- Attend CM/Sub-Contractor meetings on “request” basis.
- Prepare and distribute copies of weekly architectural field reports.
- Prepare and distribute field reports from each discipline for their respective site visits.
- Review required mock-ups.
- Review and process shop drawings/submittals.
- Monitor and track status of both submittals and RFI’s, including responses.
- Prepare response to RFI’s with ASI where applicable.
- Prepare clarification drawings as needed in response to RFI’s with ASI where applicable.
- Provide on-site architectural staff for duration of construction phase.
- Review “Request for Substitution” and make recommendation to City/Library/Turner Construction for either “approval” or “rejection”.
- Assist CM in preparation of both the preliminary and final punch list.
- Review Contractor Pay Applications.
- Review Contractor Cost Proposals.
- Update the SWPPP report to meet new State requirements.

LEED Scope

1. Coordinate a team effort to reevaluate the project against LEED version 3 prerequisites and credits to determine the potential level of certification and, if a silver certification is not indicated through this process, to analyze design modifications that may be required to achieve that level.
2. Enroll the appropriate design team members to LEED online so that they can access the documentation for the prerequisites and credits for which they are responsible.

3. Provide final review of design credit documentation provided by design team members prior to submitting design credits for LEED review.
4. Complete project profile documentation required by LEED Online.
5. Coordinate responses from design team members to the LEED design credit review comments and resubmit for approval.
6. Enroll the appropriate construction team members to LEED online so that they can access the prerequisites and forms for which they are responsible.
7. Provide final review of construction credit documentation provided by design and construction team members prior to submitting construction credits for LEED review.
8. Coordinate responses from design and construction team members to the LEED construction credit review comments and resubmit for approval.
9. The scope of services includes coordination with City of San Diego (Client) staff including up to four Client meetings or conference calls.

Smoke Control Special Inspection Scope

- A. Review design drawings, specifications, the Rational Analysis report, and any other documents provided to gain familiarity with the project.
- B. Prepare a summary outline that describes the entire inspection and testing process. This outline is a useful reference for all disciplines involved in the construction and testing of related building systems.
- C. Prepare functional testing scenarios. These scenarios will be used to confirm proper sequence of operations of the smoke-control system, and will also be used for the Fire Department final acceptance test.
- D. Attend project meetings with the City to discuss the testing program.

- E. Attend project meetings with the design and/or construction teams to discuss and coordinate the smoke-control testing.
- F. Witness testing of the smoke-control system, including initiation of each device that activates the smoke-control system. Confirmation of the appropriate sequence of operation will be conducted at this time. Evaluate that the installed smoke-control system meets the design intent approved by the City.
- G. Assist in all-system testing with the City.
- H. Prepare a report documenting all test results. The test report will be submitted to the Designer, City, and Owner as required by the building code.

Curtain Wall Mock-Up Testing Scope

Phase I:

CDC has been requested to meet with the general contractor identified as Turner Construction, the Architect, Including the design architect, and the representative for the City to review and advice on alternatives to the project specific design specifications and design requirement as it relates to the performance mock-up testing for “window facade” designs. Based on the results of that meeting CDC must prepare an alternative specification to section 01450.

Phase II:

MOCKUP CONSTRUCTION AND TESTING

CDC personnel will be involved with the complete review of the performance mockup shop drawings and mockup calculations. We anticipate that there will be a total of two (2) performance mockups. We are proposing to have limited attendance during the installation of the test specimens, witness any pre-testing that may occur and then to witness the complete battery of tests identified in the project specifications. We estimate that it will require a total of **5 working days** at the test lab for each test specimen. Since we are not aware as to the scheduling of the tests we have assumed that each test specimen will be constructed at a separate time.

During this phase of work, CDC shall:

Review Contractor’s Mock Up Test (2 Tests Total) Including the Following:

- Review Mock up Test schedule

- Review appropriateness of test parts and test items
- Review shop drawings and die drawings
- Witness the installation of the test specimen from the start of specimen installation.
- Witness all pre-testing and formal testing of each specimen.
- Fee includes providing a written report of observations and recommendations concerning the acceptability of test results.
- CDC will review and comment on the laboratory report and as-built mock-up shop drawings.

Phase III:

- Meet with Turner, Architect, City Representative, and Window Wall System subcontractor to review and assess proposed alternative to current design, including review of window glass size on project.

Phase IV:

Assist Architect in review of curtain wall, window wall shop drawings for the “punched window wall” system, “Reading Room window wall system”, and the “Special Events curtain wall system” with the proposed alternative by the Subcontractor.

Project Management Consultant Scope of Services

Steinmann Facility Development Consultants (SFDC)

1. Contracts - Continue to assist in the development and review of contracts for execution of construction with Turner Construction Company (TCCO) and other vendors to be engaged, which include a Purchase Power Agreement, Chilled Water Agreement, shelving procurement, procurement of a book conveyor and sorting system, and other specialty items.
2. GMP - Continue to review and refine the GMP as developed by TCCO and oversee the development of a comprehensive Schedule of Values including subaccounts by floor to be used to monitor monthly pay draws.
3. Furniture Procurement Management – Work with the City Purchasing Department and the Library to develop the most appropriate methodology for soliciting competitive bids/proposals for furniture and equipment items, develop a competitive solicitation, evaluation, and award basis. Identify all required procurement packages and develop a schedule for FF&E procurement coordination.

4. Review Meetings – Participate in Owner/Architect/Contractor (OAC) review meetings with primary attention to the review of construction progress, potential change orders, status of RFI's, completion of required redesign as may be necessary, and all cost issues related to the GMP. It is anticipated that the review meetings will be weekly and Jim Steinmann will attend an average of every two weeks for the first 15 months of construction and then monthly thereafter until project close-out. A total of 22 review meetings that are not concurrent with the monthly draw meetings, are included in the Fee Proposal. One review meeting per month is scheduled to be in conjunction with the monthly draw meeting.
5. Draw Meetings – Attend the monthly draw meeting, which includes a comprehensive status update, tour of the building, assessment of the level of construction completed, review of contractor and sub-contractor draw requests, and negotiation of monthly payment. The draw meetings will be conducted on the day following a standard project meeting that Jim Steinmann will also attend. This will entail a two-day visit to the jobsite monthly for the duration of the project. The Fee Proposal includes 30 trips, 30 overnight accommodations, and 60 days of per diem allowance.
6. Correspondence Review – Throughout the project Jim Steinmann will regularly review electronic correspondence that will provide him with RFI's that Nikki Lewis/Dieter Haskie believe have a cost implication (either increase or decrease), schedule impact, or requires review for compliance with space plans or design criteria. Jim Steinmann will review these RFI's and responses from the Architect and prepare a response for review with the project team in one of the regularly scheduled project meetings.
All change orders, back-up information and cost data, and other related technical information will be provided electronically to Jim Steinmann for review throughout the project. For correspondence review, we have included eight (8) hours per month throughout the project timeframe.
7. Change Order Review and Negotiation - All potential change orders (PCO), cost estimates, and actual change orders (CO) will be provided to Jim Steinmann for review and assistance in negotiation. Jim will analyze the change orders along with appropriate members of the architectural and engineering team and provide a written recommendation to the City and TCCO during the regularly scheduled project meetings.
8. Partnering Meetings – Participation in quarterly partnering meetings to be scheduled concurrent with the monthly draw meetings will be provided. We will prepare an agenda of discussion topics and list of attendees. It is assumed there would be ten (10) quarterly

partnering meetings to resolve significant issues during the 30-month construction timeframe.

9. Furniture Procurement – Following is an eight (8) step process required to develop furniture specifications, conduct a competitive bid/RFP process, evaluate, order, and coordinate delivery and installation of furniture-related items.
 1. Verify requirements, review space plan, and adjust to reflect reduced staff levels and Collection volumes. Adjust space plan for FF&E as required. This does not include any changes to construction requirements.
 2. Develop three (3) levels of FF&E procurement cost estimate. Levels include:
 - a. All new for space;
 - b. Combination of new in most public areas and reuse of aesthetically acceptable public furniture and shelving and functional private area furniture.
 - c. Minimum new furniture to be operable at opening with maximum reuse of existing to reflect minimum cost if funds not available.
 3. Develop the preferred bid/RFP process, basis of selection, and definition of bid packages.
 4. Develop design criteria with the Architect and Library for FF&E and prepare competitive technical specifications for an estimated ten (10) bid packages.
 5. Coordinate opening of bids/proposals and presentations, review of samples and mock-ups, evaluation and selection with administrative assistance from Library or City Purchasing. Selection will be by the Library with advice of the Architect.
 6. Coordinate the selection of colors and materials and development or order. The Architect and Library will make selections.
 7. Develop delivery and installation schedules for ten (10) orders and, with administrative assistance from the Library, track the manufacturing and delivery, inspection, and installation process.
 8. Verify receipt of goods, provide three (3) site visits to inspect FF&E installation, punch list, and approve invoices for payment.

10. Project Close-Out – At the conclusion of the project SFDC will participate in project close-out procedures with the main emphasis on final project accounting from TCCO, incorporation of all costs into a comprehensive project budget, negotiation of all final payments to TCCO, and review of all work progress to assure that all program and design requirements have been completed. It is anticipated that project close-out would continue for three (3) months after beneficial occupancy.

On-Call Services –During the course of the project there will be special studies requested by the City of San Diego or the need for further meetings beyond those included in Exhibit A. It is recommended that an allowance be provided that can be used for these additional services or additional meetings based upon written or electronic notification by the City of San Diego. An allowance of 10% of the total project cost is recommended. These funds would not be utilized unless specifically authorized by the City.

M-E Engineer (Enhanced Commissioning)

- A. The work is intended to satisfy the requirement of the USGBC LEED Rating System 3.0 Energy and Atmosphere (E&A) Prerequisite 1, Fundamental Commissioning of Energy Systems. The items identified with an asterisk (*) are intended to satisfy the E&A Credit 3, Enhanced Commissioning.
- B. We understand that the project consists of a new, approximately 498,000 SF Main Library Building including two levels of subterranean parking and a separate Auditorium building in Downtown San Diego.
- C. Systems to be commissioned include the following:
 - 1. Heating, Ventilation and Air Conditioning Systems.
 - 2. Domestic Hot Water System.
 - 3. Renewable Energy Systems.
 - 4. Building Controls Systems (Central Automation System).
 - 5. Lighting Systems (Occupancy/Sensors & Daylight Controls).
 - 6. Normal and Emergency Power Systems.
 - 7. Uninterruptible Power Supply (UPS) Systems.
 - 8. Life Safety Systems (fire alarm systems).
- D. This fee is based on a 30 month construction duration for the entire project with an anticipated start date of August 2010.
- E. Commissioning services for the proposed Charter School tenant build-out is not included herein. We will only address basic operation of these systems.
- F. Documentation as required by City Building and Fire Department for approval for the final life/safety system smoke control report is to be by an independent group and is not included herein.
- G. It is understood that a Sustainable Design Consultant will assume the lead role in providing the LEEDs certification documentation. We will prepare the LEED templates pertaining to Commissioning activities.
- H. M-E Engineers will provide the Commissioning requirements. It is the responsibility of the design team to incorporate these requirements into the construction documents.

II. ENGINEERING SERVICES

- A. Review the Owner Program Requirements (OPR) and the Building Systems Basis of Design (BOD) Specification to ascertain the conceptual project requirements and Building Systems Commissioning Requirements.
Status: Completed previously, must revisit.
- B. Review the completed Schematic Drawings and Outline Specifications for adherence to program requirements and for development of Commissioning Requirements. Compile an outline of the Commissioning Plan and an Outline Specification for the Commissioning Requirements. Conduct a two hour meeting with the Design Team to review the plan and outline specifications.
Status: Completed.

- C. Prepare Building Systems Commissioning Plan and Commissioning Specifications for the systems identified above.

Submit Commissioning Plan, Commissioning Specifications and Commissioning Schedule to Owner and Design Team. Conduct a two hour meeting to review documents and obtain input from the Owner and the Design Team.

Status: Approximately 85% complete, must update.

- D. *Review 100% Design Development Documents (plans and specifications) for adherence to Commissioning related compliance with the Owner Program Requirements and Basis of Design. Compile a Preliminary Constructability Review of the project. Conduct a two hour meeting with the Owner and the Design Team to discuss the 100% DD review. Issue meeting summary which outlines the meeting's discussion and include input and action items from the Design Team.

Status: Completed previously.

- E. Based on comments from the Owner and the Design Team, compile Final Building Systems Commissioning Plan for systems noted in Item C (above). Review updated Construction Schedule and integrate Commissioning Plan into Construction Schedule.

Status: Approximately 50% complete.

- F. *Review 90% Construction Documents (plans and specifications) for adherence to Commissioning related compliance with Project Program and Basis of Design. Issue written summary of 90% CD review. Conduct a two hour meeting with the Owner and the Design Team to discuss the 90% CD review. Issue meeting summary which outlines the meeting's discussion and include input and action items from the Design Team.

Status: Approximately 50% complete. As the documents are now at the 100% level, we would expect this review to utilize that set.

- G. Compile Preliminary Functional Systems Performance Testing Forms based on 90% Complete Construction Documents. Submit to Owner and Design Team for review and input.

Status: Approximately 20% complete, no longer needed (see Item H).

- H. Compile Final Systems Functional Performance Testing Forms based on comments from the Owner and the Design Team. Submit forms to Design Team for inclusion with 100% Complete Construction Documents.
Status: No work started.
- I. *Provide review of Contractor major equipment submittals and shop drawings applicable to systems being commissioned for conformance to the OPR, BOD and Commissioning Requirements. Submit review comments to Owner and Design Team for inclusion with A/E Conformance Review. Note that our review of submittals does not, substitute or alter the scope or responsibility of the Design Team's obligations to approve or reject submittals.
Status: No work started.
- J. Provide Field Observation Review of equipment installation for conformance to Commissioning Requirements. Submit review comments to Owner and Design Team for inclusion with A/E Conformance Review.
Status: No work started.
- K. Provide field verification of functional systems start-up commissioning performance by the Contractor. Review Function Systems Testing Forms completed by the Contractor. Compile summary of deficiencies required for final approval. Review and approve final re-submitted Functional Systems Testing Forms and Issues and Resolutions Log.
Status: No work started.
- L. Provide review of Operations and Maintenance (O&M) Manuals complied by the Contractor. Compile summary of deficiencies required for final approval. Review and approve final O&M Manuals.
Status: No work started.
- M. Provide coordination and observation during the Owner Training Sessions. Review and comment on the Contractor provided Owner Training Plan and Schedule. Provide on-site meeting time with the Owner as needed. Document conformance to specified training requirements.
Status: No work started.
- N. Prepare Commissioning Report which summarizes activities and conformance to the specified requirements. Conduct a meeting to present the report to the Owner and Maintenance Personnel.
Status: No work started.
- O. *Prepare Re-commissioning Management Manual for implementation within 10 months of substantial completion. Include Functional Testing requirements of

major systems and operation checks of all equipment under warranty (near warranty expiration date). Compile a post-occupancy inspection and compile a report summarizing the observations. Conduct a four hour meeting to present the information to the Owner and Maintenance Personnel.

Status: No work started.

Exhibit B-7

Compensation Schedule

SAN DIEGO NEW MAIN LIBRARY

A/E CA FEE PROPOSAL

June 7, 2010 REV.

A	B	C	D	E	D+E	F
Discipline/Firm			Const. Adm. Revised Fee (Feb. 6, 2010) Percentage of Fee (30 month sched.)	As-Built Fee	Total	Comments (Note: CA Phase is now longer; percentage shown is increase based on 27 month duration for comparison.)
Architect: Rob Wellington Quigley Architects Tucker Sadler Architects A Joint Venture			\$2,071,000	\$52,000	\$2,123,000	28.12%
Structural: WBE Martin Libby Engineers			\$343,339	\$33,715	\$377,054	
Mech/Plumbing: SC Engineers			\$238,000	\$55,000	\$293,000	34.38%
Elec/Telecom/Splyt Ltg: LSW			\$236,400	\$34,650	\$271,050	20.89%
Civil: MBE Flores-Lund Consultants			\$14,560	\$5,900	\$20,460	20.89%
Landscape Architect: WBE Katherine Stangle			\$26,000	\$7,200	\$33,200	19.97%
Fire Alarm			NA (Design Build)	NA	NA	
ADA Consultant: Not required (DSA Review)			NA	NA	NA	
Elevator Consultant: HKA Elevator Consulting			\$10,840	NA	\$10,840	10.36%
Security System			NA (Design Build)	NA	NA	
Security/Hardware: The Schatz Consulting Group (Out of Business)			NA (Design Build)	NA	NA	
Signage: Harmon Nelson Design			\$25,000	\$5,000	\$30,000	7.74%
Dry Utilities: Professional Consulting Group			NA	NA	NA	
Code/Fire Protection: Schirmer Engineering Group			\$45,600	NA	\$45,600	34.59%
Window Washing System Consultant: CS Caulkins, Inc.			\$11,400 New Consultants added in CD Phase as Add'l Service	NA	\$11,400	
Specification Writer: WBE Architectural Specifications, Inc.			NA	NA	NA	
Acoustical/AV: Charles Salter Associates			\$32,500	\$2,500	\$35,000	-0.01%
Roof/Waterproofing: CRC Consulting Group			\$16,000	NA	\$16,000	17.61%
Interior Design: RWQ/MSR			\$75,000	NA	\$75,000	10.74%
Subtotal			\$3,145,639	\$195,965	\$3,341,604	

A	B	C	D	E	D+E	F
Discipline/Firm			Const. Adm. Revised Fee (Feb. 6, 2010) Percentage of Fee (30 month sched.)	As-Built Fee	Total	Comments (Note: CA Phase is now longer; percentage shown is increase based on 27 month duration for comparison.)
Subtotal from Page 1 of 2			\$3,145,639	\$195,965	\$3,341,604	
LEED Consultant: WBE Platt/Whitelaw Architects			\$49,759*	NA	\$49,759	*Includes 10% Mark-Up
LEED Commissioning Consultant: M-E Engineers			\$169,510	NA	\$169,510	*Includes 10% Mark-Up
Smoke Control Special Inspection: Schirmer Engineering Group			\$23,500*	NA	\$23,500	*Services to be performed on an hourly basis with NTE
Curtain Wall Consultant: Curtain Wall Consultant Design & Consulting, Inc.			\$39,100	NA	\$39,100	
Civil Engineer: MBE Flores-Lund Consultants			\$3,520	NA	\$3,520	Updating of the SWPPP to meet new state requirements; *Includes 10% Mark-Up
Development Consultant: SFDC			\$647,000*	NA	\$647,000	*Includes 10% Mark-up (Services to be performed on an hourly basis with NTE)
Sub-Total			\$4,078,028	\$195,965	\$4,273,993	
WBE/MBE Percentage			10.70%			
Other Percentage			89.30%			
Total Percentage			100%			

Insurance			\$671,125	
Total			\$4,945,118	

Notes:

1. The above fee does not cover any necessary changes to drawings of those disciplines that were not involved in the "Spec/Drawing Update" effort, and whose drawings may need to be modified, changed, revised and/or coordinated with the work done by those disciplines that were involved.

Exhibit C-7.

Fee Schedule

M-E Engineers

Principals	\$200.00
Senior Associates	\$160.00
Associates	\$145.00
Project Managers	\$140.00
Project Engineers	\$115.00
Construction Administration	\$115.00
Engineers	\$110.00
Designers	\$105.00
CAD Operators	\$90.00
Administration Staff	\$75.00

Steinmann Facility

Project Management Consultant Services(Jim Steinmann)	\$195
Interior Designer	\$145.00

The base hourly rate which is increased by 3% per calendar year, and the unit costs estimated for airfare, hotel, per diem, transit to the airport, parking at the airport, ground transportation (taxi) in San Diego, and miscellaneous communication and printing expenses.

Services will be invoiced on a time and material basis monthly. Reimbursable expenses will be invoiced at cost plus 10% with required receipts.